BEFORE THE

ILLINOIS COMMERCE COMMISSION

AT&T Communications of Illinois, Inc.,	)	
TCG Illinois and TCG Chicago	)	
	)	
Petition for Arbitration of Interconnection	)	Docket No. 03-0239
Rates, Terms and Conditions and Related	)	
Arrangements With Illinois Bell Telephone	)	
Company d/b/a SBC Illinois Pursuant to	)	
Section 252(b) of the Telecommunications Act	)	
of 1996	)	

SBC ILLINOIS' REPLY BRIEF ON EXCEPTIONS

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BEFORE THE

ILLINOIS COMMERCE COMMISSION

AT&T Communications of Illinois, Inc., TCG Illinois and TCG Chicago	)	
Petition for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements With Illinois Bell Telephone Company d/b/a SBC Illinois Pursuant to Section 252(b) of the Telecommunications Act of 1996	)	Docket No. 03-0239

SBC ILLINOIS' REPLY BRIEF ON EXCEPTIONS

AT&T's exceptions must be taken with a grain of salt. AT&T claims it is "not filing exceptions on a number of issues as to which the [PAD] recommends a result different than the outcome proposed by AT&T in its briefs" (AT&T Exc. 1[1]), but for the most part, that means only that AT&T is not taking exception on a few issues on which the PAD does not give AT&T exactly what it asked for. AT&T has taken exception on practically every issue that was actually resolved in favor of SBC Illinois, and on many issues on which the ALJs crafted a compromise. All told, AT&T takes exception on 47 issues, and that includes issues the Commission has repeatedly decided in favor of SBC Illinois (four times, in one instance), issues AT&T has litigated against SBC and lost in federal court, and straightforward, not very earthshaking issues on which the reasonable course was for the losing party to yield to the ALJs' judgment – as SBC Illinois did on numerous issues.

[1] This brief cites to the first round of post-hearing briefs as "AT&T Br.," "Staff Br." and "SBC Br."; to the second round of post-hearing briefs as "AT&T Reply," "Staff Reply" and "SBC Reply"; and to the briefs on exceptions as "AT&T Exc.," "Staff Exc." and "SBC Exc."

The PAD cannot possibly be wrong on everything it decides against AT&T, and SBC Illinois is not going to burden the Commission with a detailed rehash of its arguments on the multitude of issues AT&T has raised. Accordingly, SBC Illinois respectfully urges the Commission to consult SBC Illinois' Initial Post-Hearing Brief and Post-Hearing Reply Brief for a complete discussion of any issue on which the Commission finds itself inclined to grant AT&T's exception.

GTC:
ISSUE 1.a: Should the change of law provision apply at the effective date of the agreement or from February 19, 2003?

The position AT&T advances in its Brief on Exceptions is the fourth different position AT&T has taken on this issue during this proceeding. Initially, AT&T insisted that in order to qualify as a change of law event that would warrant a modification to the Agreement, an event had to occur after the Effective Date of the Agreement – with no exceptions. Then, seeing the writing on the wall, AT&T backed off and conceded (in its witness's reply testimony) that an exception should be made for the FCC's anticipated Triennial Review Order, so that that Order could be treated as a change of law event even if it issued before the Effective Date of the Agreement. Subsequently, AT&T, seeing more writing on the wall, allowed that there should be two additional exceptions – one for the May, 2002, decision of the United States Court of Appeals for the D.C. Circuit in *United States Telecom. Ass'n v. FCC* and for the anticipated decision of the federal district court on SBC Illinois' appeal of this Commission's Order in Docket 01-0614 – but that other than those three exceptions, an event could qualify as a change of law only if it occurred after June 18, 2003. AT&T Reply 2-3. Now, AT&T proposes the same three exceptions, but moves the trigger date back by two months, to August 26, 2003. AT&T Exc. 3.

Enough is enough. AT&T should not be permitted to back and fill its way into a "compromise" on this issue by successively yielding bits and pieces of its untenable position until it reaches a point that it deems acceptable. The PAD's resolution of this issue was recommended by Staff, and the concern that drove Staff was not tied to any particular FCC Order or court decision. Rather, the concern expressed by Staff was a general one – that changes in applicable law can occur too late in the process to be taken into account "in negotiating and arbitrating an interconnection agreement" (Zolnierek lines 143-146) and that *any* such changes in law could be excluded by AT&T's proposal (*id*. lines 146-148). The parties' negotiations were based on the law as it was prior to February 19, 2003 (*see id.* lines 265-269 and n.23), and any and all post-February 19, 2003 legal developments should therefore be eligible for treatment as changes in law under the parties' Agreement, not just the three developments identified by AT&T.

AT&T observes that the parties continued to settle issues through July 23, 2003, and contends that that means the parties' negotiations were not predicated on the law as it stood as of February 19, 2003. That contention is disingenuous. Yes, the parties have been able to find common ground on some issues as they have come to a better understanding of each other's positions through the arbitration process. That does not imply, however, that the parties have accommodated their positions to post-February 19, 2003, legal developments. Indeed, none of the issues on which the parties have filed Notices of Settled Issues was resolved in light of recent legal developments. Rather, they were resolved through the give and take of negotiation against the legal baseline against which the parties began the arbitration process – February 19, 2003.

The Commission should reject AT&T's exception and resolve GT&C Issue 1.a as recommended in the PAD.

GTC:
ISSUE 1.b: Should either party be obligated to renegotiate a change in law that is not applicable and materially affects this agreement?

One piece of the proposed AT&T language that the ALJs wisely rejected is a requirement that to qualify as a change of law, the change must be a *material* change that *materially* affects a *material* provision in the agreement. (Yes, AT&T's proposed language actually says "material" or "materially" three times. *See* SBC Br. 7-8). In theory, AT&T's position has some appeal. After all, why would anyone want to amend a contract in light of a change of law that is ***im***material or that has only an ***im***material impact or that affects an ***im***material provision in the parties' contract? As contract language, however, AT&T's proposal is horrendous. For changes of law that AT&T and SBC Illinois would agree are immaterial, AT&T's language is unnecessary. And for changes of law about whose materiality the parties would disagree, AT&T's language guarantees pointless disputes that would be a nightmare for the Commission to have to resolve and that would produce only unnecessary delay. It is much more sensible to proceed on the basis that if a party attaches sufficient importance to a new legal development to invoke its change of law rights, the other party's contention that the change of law is "immaterial" or has only an "immaterial" impact or affects only an "immaterial" provision in the contract should not be entertained.

Even sillier than AT&T's materiality trio is AT&T's proposed language to the effect that the change of law provision should say that the only changes of law that warrant a contract modification are those that affect the Agreement. Again, AT&T's position has superficial appeal – who could ask to change the Agreement in light of a change of law that does not affect the Agreement? And if SBC Illinois were to request renegotiation of this Agreement in light of a new FDA labeling regulation for tomato paste, SBC Illinois would fully expect AT&T to resist and to carry the day in this Commission if SBC Illinois were to push the point. As the ALJs concluded, however, that does not justify AT&T's proposal for a two-stage dispute in the Commission – one over whether the legal development pertains to the Agreement and then another over the appropriate amendatory language.

SBC Illinois has explained in detail how AT&T's proposed language would promote disputes and delay (SBC Br. 9-11) – all for the apparent purpose of putting off for as long as possible any changes to the Agreement in light of new legal developments (*see* SBC Br. 10 n.4) – and respectfully refers the Commission to its brief if the Commission has any doubt on this score. The ALJs were correct in their conclusion that AT&T's language would lead to a proliferation of disputes and delay. AT&T's disingenuous argument to the contrary (*see* AT&T Br. 7-8) fails, because, at the end of the day, there are two core differences between the parties' proposals: First, while both proposals allow either party to respond to the other's invocation of change of law by taking the position that there has been no change of law that warrants a change to the contract, AT&T's proposal would in many instances yield two separate proceedings before the Commission – one on whether a contract change is warranted and the other on what the change should be – while under SBC Illinois' proposal, those two questions are addressed in a single proceeding. And under SBC Illinois' language, unlike AT&T's, the Commission will not have to grapple with the elusory question whether a change of law is a material one that materially impacts a material provision of the contract.

Accordingly, and for the additional reasons set forth in SBC's Initial Brief, the Commission should adopt the PAD's resolution of GT&C Issue 1.b.

GTC:
ISSUE 1.d: Should there be a final and nonreviewable standard for dispute resolution related to change in law?

The PAD correctly determines that when a court or the FCC or this Commission changes the law on which this Agreement is based, the Agreement should be subject to modification to conform with the change of law, and that the party in whose favor the change of law operates should not have to wait – potentially for years – for the change of law to be "final and nonreviewable" (*i.e.*, for all appeals to have been exhausted) before it can avail itself of the change. Oddly, AT&T's exception does not dispute the core of the PAD's rationale. Instead, AT&T merely observes that its language does not *always* require the parties to wait until a change of law has become final and nonreviewable, but instead only allows a party that wishes to resist a change to the Agreement in light of a change of law to ask the Commission, on a case-by-case basis, to order the parties to wait. That observation is correct, but it does not salvage AT&T's proposal. A party in whose favor a change of law operates should never be required to wait for all appeals to be exhausted before availing itself of the change. The bottom line is that if a provision appears in the Agreement because the law says X and the law then changes to Y, there is no lawful basis for requiring the provision to remain in the Agreement.

Furthermore, AT&T's proposal is also defective because it would require the Commission to decide when to defer contract renegotiations in light of changes of law (more disputes for the Commission to deal with) without providing any guidance on how the Commission would decide such a question.

INTERCONNECTION:

ISSUE 1: Where SBC elects to subtend another LEC's tandem switch for exchange access and intraLATA toll traffic, may AT&T interconnect indirectly to SBC via such tandem for local traffic?

<u>Reply To Staff's Exception</u>

Staff makes a helpful clarification to section 3.2.5.1 which should be adopted. The clarification would make section 3.2.5.1 consistent with the ALJs' compromise language for section 4.3.1. The purpose of this change, in Staff's view, is to make clear that in the case of indirect interconnection through another ILEC's tandem switch, SBC Illinois is not required to pay for the transport of calls from the POI (located within SBC Illinois' territory) to AT&T's switch (located outside of SBC Illinois' territory). Staff Exc. 2-3. SBC Illinois endorses Staff's proposal and notes that it is consistent with the conclusion in the PAD that "such a POI, which would clearly establish the point of financial and physical demarcation for exchange of traffic, is consistent with requirements of TA96 and FCC Rules." PAD at 21-22.

One additional change should be made, however, to completely remove the ambiguity that troubles Staff. In particular, section 3.2.5.1 and section 4.3.1 should be changed to make clear that the obligation set forth in section 4.3.2 to transport originating traffic to the terminating Party's switch does not apply in the case of indirect interconnection discussed above. Section 4.3.2, as modified in the PAD, provides that the originating party will compensate the terminating party for transport to carry originating traffic between the POI and the terminating Party's switch. This accurately reflects the PAD's conclusion on Interconnection Issues 6 and 7. It does not, however, accurately reflect the PAD's decision on Interconnection Issue 1, which holds that, in the case of indirect interconnection through a third party tandem switch, the POI must be located in SBC Illinois' operating territory and the POI "clearly established [es] the point of financial and physical demarcation for exchange of traffic." PAD at 21-22. A clarification is needed because otherwise AT&T could argue that section 4.3.2 (which says that SBC Illinois transports traffic all the way to the AT&T switch) "trumps" the Commission's conclusion in section 4.3.1 (which says that SBC Illinois – in the case of indirect interconnection – only transports traffic to the POI in its operating territory). This unintended consequence should be addressed by including at the end of section 3.2.5.1 the following:

> In such circumstances, SBC shall not be required to pay for transport outside its operating territory, notwithstanding anything to the contrary in section 4.3.2.

Combined with Staff's proposed changes, section 3.2.5.1 should read as follows:

> Where SBC-Illinois' end offices subtend another ILEC's tandem switch for local traffic and/or exchange access, AT&T may, at its discretion, interconnect with SBC-Illinois for local traffic and/or exchange access utilizing the other ILEC's tandem switch or at the SBC-Illinois end office. If AT&T elects interconnection via the third party tandem switch, it shall designate a POI within the operating territory of SBC-Illinois <u>and deliver its originating traffic to SBC-Illinois at this POI</u>. Each party is responsible for the facilities on its side of any POI(s) established under such conditions. Each party is responsible for ensuring that any facilities provided by a third party on its side of any POI in such an interconnection arrangement comply with the provisions of this interconnection agreements. <u>In such circumstances, Ameritech Illinois shall remain responsible to deliver its originating traffic to AT&T at AT&T's switch or such other mutually agreeable POI(s). However, such switch or POI(s), whichever is applicable, must be within the LATA and within Ameritech Illinois' operating territory where the traffic originates.</u> *In such circumstances, SBC shall not be required to pay for transport outside its operating territory, notwithstanding anything to the contrary in section 4.3.2.*

(Staff's additions are underlined. SBC Illinois' additions are shown in italics).

<u>Reply To AT&T's Exception</u>

AT&T renews its argument that SBC Illinois should pay to transport traffic from the point of interconnection located in SBC Illinois' operating territory to AT&T's switch location, wherever that may be. AT&T Exc. 13. AT&T goes so far as to propose, for the first time, that SBC Illinois pay Verizon's "third party transit charges" rather than TELRIC charges. AT&T Exc. at 15. The ALJs properly reject this request in the PAD and should reject it again.

First, AT&T fails to address the PAD's conclusion that the POI must lie "within" SBC Illinois' territory under section 251 (c)(2)(b) of TA96. PAD at 21. AT&T ignores this requirement, but ignoring it does not make the requirement go away.

Second, AT&T offers nothing new in support of its position. In fact, it does not even offer any criticism of the PAD's conclusion. Instead, it attempts to pass off its exception as a mere clarification. AT&T Exc. 13. In short, AT&T provides no justification to change their decision in the PAD and its request should be rejected.

INTERCONNECTION:

ISSUE 5: Are there reasonable limitations on AT&T's right to interconnection with SBC Illinois free of any charge? For instance, is AT&T entitled to receive expensive interconnection, FX interconnection, and interconnection outside SBC's franchised territory free of charge as discussed further in issues 6-9.

AT&T's proposed change on this issue would reverse the PAD's conclusion on Interconnection Issue 1 and should be rejected. In the guise of seeking to "clarify" section 4.3.1, AT&T proposes a revision that would permit it to establish a POI outside of SBC Illinois' operating territory. Again, this proposal is in direct violation of section 251(c)(2)(B) of TA96 which requires AT&T to interconnect at point "within" SBC Illinois' network. For this reason, and for the reasons discussed above in Interconnection Issue 1, AT&T's exception on Interconnection Issue 5 should be rejected.

AT&T's exception raises another issue which the ALJs should clarify – but not in the manner AT&T proposes. The issue is the rate at which each party compensates the other for any transport used to carry originating traffic between the POI and the terminating Party's switch. AT&T raises this issue in context of section 3.2.5.1, but it is really more appropriately addressed in the context of section 4.3.2. SBC Illinois proposes that the following language be added to section 4.3.2 to address this issue:

> The rate paid by the Originating Party to the Terminating Party shall be the same as the rate for unbundled dedicated transport as set forth in the Pricing Schedule.

This language is unobjectionable on its face. It would merely require each Party to pay each other at the TELRIC-based rates that appear in the Pricing Schedule. This clarification is necessary to address AT&T's proposed language for section 3.2.5.1, where it proposes that SBC

Illinois pay AT&T at the transit rates imposed by a third-party carrier such as Verizon. That proposal is clearly unfair for two reasons.

First, in the case of interconnection through a third-party tandem switch, SBC Illinois' financial responsibility ends at the POI located in SBC Illinois' operating territory. In this situation, SBC Illinois (and all other Illinois ILECs) should not be required to pay *any* transport fees beyond the POI in its operating territory. Second, SBC Illinois in any event should never pay AT&T for transport rates that exceed the reciprocal, symmetrical rates set forth in the Pricing Schedule.

AT&T's exception highlights another shortcoming in AT&T's position. Taken literally, AT&T's proposal could require SBC Illinois to transport traffic to an AT&T switch located outside the LATA in which the call originated. This would involve SBC Illinois in prohibited carriage of interLATA traffic and the Agreement should explicitly state that there is no such obligation. AT&T apparently agrees with this, because its original proposal for section 4.3.1 recognized that SBC Illinois would transport traffic only "within the LATA" and included language which stated that "AT&T shall bear the cost to transport traffic between the designated AT&T POP within the LATA and the AT&T terminating switch in the other LATA." Section 4.3.2 should be changed to recognize this limitation.

For these reasons, SBC Illinois respectfully requests that section 4.3.2 be revised to read as follows:

> 4.3.2 In a one (1) way trunking architecture, each Party originating Local/IntraLATA traffic ("Originating Party") shall compensate the Party terminating such traffic ("Terminating Party") for any transport that is used to carry such Originating Party's Local/IntraLATA traffic between the POI and the Terminating Party's switch serving the terminating end user or its designated Point of Presence ("POP"). <u>The rate paid by the Originating Party to the Terminating Party shall be the same as the rate for unbundled dedicated transport as set forth in the Pricing Schedule. AT&T shall bear the cost to transport any traffic between the designated</u>

AT&T POI within the LATA and the AT&T terminating switch in another LATA.

INTERCONNECTION:

ISSUE 6: **In one-way trunking architectures, does SBC Illinois have an obligation to compensate AT&T for any transport used by AT&T to terminate Local/IntraLATA traffic originated by SBC Illinois if AT&T's POI and/or switch is outside the local calling area and the LATA where the call originates?**

ISSUE 7: **When AT&T has requested a POI located outside the local calling area of SBC Illinois' end user originating the call, should AT&T be financially responsible for the transport outside the local calling area for Local/IntraLATA traffic originated by SBC Illinois.**

ISSUE 8 **When AT&T has requested a POI located outside the local calling area of SBC Illinois' end user originating the call, should AT&T be financially responsible for the transport outside the local calling area for FX traffic originated by SBC Illinois.**

Staff's exceptions to Interconnection Issues 5, 6, 7 and 8 strike the same chord as SBC Illinois' exceptions on Interconnection Issues 6, 7, and 8. In both cases, Staff and SBC Illinois note that the number of AT&T switches and switch locations in the Chicago LATA creates a significant difference that should be reflected in the interconnection language of the Agreement. Staff Exc. 4-5; SBC Exc. 8-10. Each proposal recognizes that SBC Illinois should only be required to transport traffic to the AT&T switch closest to the SBC Illinois exchange in which the traffic originates.

In view of the similarity of positions, Staff and SBC Illinois have had discussions to explore whether they could assist the ALJs by proposing language that captures the concerns of both parties. Set forth below is proposed language that should be included at the end of section 4.3.2:

> Notwithstanding anything to the contrary in this Article 4, when SBC Illinois is the Originating Party it shall not be required to transport originating traffic to an AT&T POI that is further away than an eligible AT&T switch. An AT&T switch shall be deemed an eligible switch if it is used for the provision of local exchange or FX service and it is not

> technically infeasible to receive SBC's traffic at the AT&T switch. If AT&T asserts that a particular switch is not eligible to receive traffic originated by SBC then AT&T must demonstrate that the switch is not used by AT&T for provision of local exchange or FX service or cannot as a result of technological infeasibility receive SBC's traffic. If AT&T requests that SBC Illinois transport traffic beyond an eligible AT&T switch that is the switch closest to the exchange in which the call originated, AT&T shall pay for the transport beyond its closest switch location at the TELRIC-based rates for unbundled dedicated transport.

It is SBC Illinois' understanding that this language appropriately addresses Staff's concern and is acceptable to Staff.

For all of the reasons set forth in exceptions of SBC Illinois and Staff on Interconnection Issues 6, 7 and 8, SBC Illinois respectfully requests that this language be incorporated into Article 4 of the Agreement.

INTERCONNECTION:
ISSUE 9: **When AT&T has requested a POI located outside the local calling area of SBC Illinois' end user originating the call, should AT&T be financially responsible for the transport outside the local calling area for FX Traffic originated by SBC Illinois?**

Please see SBC Illinois' response to AT&T's arguments under Interconnection Issue 5, above.

INTERCONNECTION:
ISSUE 10: **Should the charges for the use of each Party's SS7 network be reciprocal?**

AT&T argues that the FCC's stated policy goal to reduce reliance on carrier-to-carrier payments does not justify the "bill and keep" arrangement for SS7 signaling. Despite AT&T's objection, the PAD has this issue exactly right. AT&T's proposal would open up yet another front in the contentious carrier compensation wars, and the ALJs wisely decided to head this off at the outset. As the PAD correctly observes, traffic between SBC Illinois and AT&T is wildly out of balance, with 80-85% of traffic originating on SBC Illinois' network. Viewed in this light, AT&T's proposal would provide it with a windfall at the very time the FCC is attempting to reduce carriers' reliance on such carrier-to-carrier payments.[2]

The ALJs' conclusion also has other benefits. For example, it is administratively simple. Carriers can avoid complex measuring, monitoring and billing for traffic. Regulators, for their part, can avoid lengthy and contentious disputes concerning payment. In this regard, it is interesting to note that the torrent of litigation spawned by ISP traffic issues continues today, although it has largely moved on from state regulatory commissions to federal appellate courts throughout the land.

Another advantage of the "bill and keep" solution is that it avoids unintended consequences. When the reciprocal compensation regime was first imposed in 1996, few understood what it would mean for internet access traffic which was just then developing. The next several years, however, revealed that too many CLECs went into business solely to benefit

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[2] The FCC made this policy quite clear in *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, *Order on Remand* and *Report and Order*, Docket No. 96-98, FCC 01-131 (rel. April 27, 2001), where it explained that:

> The central problem with any CPNP [calling party's network pays] regime is that carriers recover their costs not only from their end-user customers, but also from *other carriers*. Because intercarrier compensation rates do not reflect the degree to which the carrier can recover costs from its end-users, payments from other carriers may enable a carrier to offer service to its customers at rates that bear little relationship to its actual costs, thereby gaining an advantage over its competitors. Carriers thus have the incentive to seek out customers, including but not limited to ISPs, with high volumes of incoming traffic that will generate high reciprocal compensation payments. To the extent that carriers offer these customers below cost retail rates subsidized by intercarrier compensation, these customers do not receive accurate price signals. Moreover, because the originating LEC typically charges its customers averaged rates, the originating end-user receives inaccurate price signals as the costs associated with the intercarrier payments are recovered through rates averaged across all of the originating carrier's end-users. Thus no subscriber faces a price that fully reflects the intercarrier payments. An ISP subscriber with extensive Internet usage may, for example, cause her LEC to incur substantial compensation obligations to the LEC that serves her ISP, but that subscriber receives no price signals reflecting those costs because they are spread over all of her LEC's customers. (Footnotes omitted; emphasis in original).

In a companion order released the same day, the FCC made clear that his concern is not limited to ISP traffic. *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, FCC 01-131 (rel. April 27, 2001).

from the income stream created by ISP traffic. The industry is still attempting to recover from the dislocations caused by this artificial transfer of wealth.

The "bill and keep" proposal is also fundamentally fair. Under this arrangement, SBC Illinois and AT&T interconnect substantially similar SS7 networks and freely exchange signaling messages in a cooperative effort to provide local calling.

AT&T argues that SS7 traffic – unlike ISP traffic – provides "no opportunity for one party to take advantage . . . to gain unwarranted compensation." AT&T Exc. 20. SBC Illinois disagrees. As the PAD correctly recognizes, 80-85% of the traffic the parties currently exchange originates on SBC Illinois' network and terminates in AT&T's network. PAD at 38. This imbalance was not created by chance. Rather, much of this imbalance is due to FX traffic. Mindell Rebuttal, lines 204-329. As Mr. Mindell explains, AT&T *attracts* in-bound calls because it separates the rating and the routing of NXX codes in order to convert a toll call made by an SBC Illinois customer (e.g., Aurora to Chicago) into a local call by making the billing system believe that it is an Aurora to Aurora call. End users that want to receive toll-free in-bound calls find this to be a very attractive arrangement and AT&T has apparently targeted those end users, thus accounting for the current traffic imbalance. Given these facts, AT&T can hardly assert that it does not take "advantage" of this situation.

Finally, AT&T's objection to the "bill and keep" solution should be rejected because its alternative proposal is fundamentally flawed. As SBC Illinois explained in detail:

1. There are SS7 costs included in reciprocal compensation rates that both parties charge one another. SBC Br. 70. Each party should be satisfied with this SS7 cost recovery and there is no need for additional SS7 signaling charges for local traffic.

2. AT&T has never explained why it is appropriate for the parties to exchange local SS7 signals over SS7 connections purchased out of the access tariff. By now, it is clear that AT&T has no intention to establish local interconnection arrangements at all, but continues to seek ways to put *local signaling messages* over the SS7 connection it established in 1992 for *access signaling*. This would be contrary to the terms of the access tariffs from which it purchases SS7 services and should not be permitted.

3. Similarly, AT&T says nothing new about the D-Link issue. The $30,000 per month charge AT&T complains of is for D-Links purchased through the access tariff. SBC Illinois is simply charging the tariffed rate for a service that AT&T ordered, and cannot provide the “rebate” AT&T is requesting by its proration proposal. If AT&T wants to avoid those D-Link charges, it should establish separate connection for local signaling traffic and SBC Illinois will do likewise under its proposal.

4. This Commission has consistently denied CLECs’ requests to impose reciprocal compensation on FX traffic originating on SBC Illinois’ network. AT&T’s proposal would “backdoor” that Commission prohibition.

SBC Br. 69-74; SBC Reply 27-28.

For all of these reasons, AT&T’s exception to this issue should be rejected and the resolution of Interconnection Issue 10 should remain unchanged.

UNE:
ISSUE 3: **Must AT&T utilize UNEs for the provision of local exchange service to end users in order to utilize UNEs for the provision of other services?**

AT&T proposes that the language adopted by the PAD for section 9.1.2 be modified to eliminate the word "Unbundled" from the first sentence, which states as follows: "SBC Illinois shall provide AT&T with combinations of Unbundled Network Elements that it 'ordinarily combines' for itself pursuant to Section 9.3 herein." PAD at 45. AT&T's proposal is without merit and should be rejected. SBC Illinois' obligation to combine "ordinarily combined" network elements is limited under both state and federal law to *unbundled* network elements. 220 ILCS 5/13-801(d)(3) (requiring SBC Illinois to "combine any sequence of *unbundled* network elements that it ordinarily combines for itself . . ."); *Order*, Docket 01-0614, ¶¶ 167, 168 (June 11, 2002) (providing that SBC Illinois is not required to combine network elements that have not been *unbundled*); FCC Rule 51.315(c) (referring to ILECs' obligations to "perform the functions necessary to combine *unbundled* network elements"). Accordingly, the PAD's inclusion of the word "Unbundled" in the sentence of section 9.1.2 referring to SBC Illinois' obligation to provide AT&T with "combinations of Unbundled Network Elements that [SBC Illinois] 'ordinarily combines' for itself" is appropriate and should be affirmed.

AT&T offers no substantive arguments in support of its proposal but, rather, simply asserts that "neither party proposed that the word 'Unbundled' should be inserted in front of 'Network Elements.'" AT&T Exc. 24. AT&T's assertion is wrong. In fact, the agreed-upon language for section 9.1.2, as set forth in Article 9 of Attachment C to AT&T's Arbitration Petition, includes the same sentence with the word "Unbundled" preceding "Network Elements," as the first sentence of the language for section 9.1.2 adopted at page 45 of the PAD. That sentence is also consistent with the agreed language for section 9.3.1, which states, in relevant part, as follows: "Subject to the provisions hereof, at the request of AT&T, SBC Illinois shall also combine for AT&T any sequence of *Unbundled* Network Elements that SBC Illinois ordinarily combines for itself or its end users." AT&T Arbitration Petition, Attachment C, Article 9-4, Section 9.3.1 (emphasis added).

Furthermore, in commenting on Staff's proposed language for section 9.1.2, SBC Illinois expressly argued that the word "Unbundled" should be inserted before the words "Network Elements" in the sentence at issue here. See Niziolek Rebuttal lines 171-187, 204-208; SBC Br. 83-84. In fact, the language for section 9.1.2 adopted by the PAD is the language proposed by Staff, as modified in the manner proposed by SBC Illinois. In supporting SBC Illinois' position, Ms. Niziolek stated that "the language of Section 9.1.2 that was agreed upon by SBC Illinois and AT&T indicates that the obligation to provide ordinary combinations is limited to ordinary combinations of 'unbundled network elements.'" SBC Illinois made the same point in its Initial Brief, noting that Staff's proposed language for section 9.1.2 reflected a revision to the "language agreed on by SBC Illinois and AT&T for section 9.1.2 that indicates that the obligation to provide 'ordinary combinations' applies only to *Unbundled* Network Elements." SBC Br. 84 (emphasis in original).

At no point prior to its Brief on Exceptions did AT&T challenge SBC Illinois' understanding of the parties' agreement regarding the language for section 9.1.2, as stated in Ms. Niziolek's Rebuttal Testimony and SBC Illinois' Initial Brief. Nor did AT&T, in either its Initial Brief or Reply Brief, argue against SBC Illinois' proposal to revise

Staff's proposed language for section 9.1.2 by inserting the word "Unbundled" before "Network Elements" in the sentence at issue here.

UNE:
ISSUE 5: Is AT&T entitled to interconnect at any technically feasible point? Is SBC required to physically cross connect AT&T's facilities with SBC Illinois' network?

AT&T complains that the PAD's resolution of UNE Issue 5 "unlawfully takes" away from AT&T the right to "interconnect and/or access network elements at any technically feasible point." AT&T Exc. 25-26. AT&T's complaint is inexplicable. With respect to access to UNEs, the PAD adopts AT&T's version of section 9.11, which states that "SBC will provide access to network elements on an unbundled basis and combinations of network elements *at any technically feasible point* including at any point set forth within Article 12 (Collocation)." PAD at 49 (emphasis added). The PAD also approves language for section 9.1.1, supported by SBC Illinois, which states that "SBC Illinois shall provide AT&T nondiscriminatory access to Unbundled Network Elements, upon request, *at any technically feasible point* on just, reasonable and nondiscriminatory rates, terms and conditions to enable AT&T to provision any telecommunications services with the LATA . . ." PAD at 40 (emphasis added). With respect to interconnection, section 3.2.2 of the ICA (which was not in dispute) states: "As provided in Section 251(c)(2) of the Act, AT&T, at its option, may request and SBC will provide Interconnection of its facilities and equipment to SBC-Illinois's network *at any technically feasible point* in SBC Illinois' network, including a mid-span meet arrangement." Thus, in asserting that the PAD deprives AT&T of its right to "interconnect and/or access network elements at any technically feasible point," AT&T is barking up the wrong tree.

The PAD's decision to modify AT&T's proposed version of section 9.2.5 did not violate AT&T's rights in any respect. Contrary to AT&T's suggestion, its proposed section 9.2.5 had nothing whatsoever to do with "interconnection," which refers to the "linking of two networks for the mutual exchange of traffic." 47 C.F.R. Section 51.5. Furthermore, AT&T's proposed section 9.2.5 purported to grant AT&T rights that go far beyond the right to have access to UNEs at any "technically feasible point." Indeed, AT&T's proposed section 9.2.5 did not even refer to the "technical feasibility" standard. Rather, that section purported to give AT&T the right to have access to UNEs at any "demarcation point" that AT&T unilaterally deems to be "suitable," without regard to technical feasibility. AT&T has cited no authority for the proposition that it has such a right.

The PAD's decision to reject AT&T's proposed version of section 9.2.5 is fully supported by the evidence. A demarcation point is the point where responsibility for the UNE or UNE combination is transferred from SBC Illinois to the CLEC. Jarmon Direct lines 73-75. The standard demarcation point is at the end of the cabling that SBC Illinois extends to the collocation space. For those methods of access to UNEs that do not require collocation, the standard demarcation point is at the CLEC end of the arrangement. Another standard demarcation point is at the network interface device ("NID") located at the end-user' premises. These points all must be defined in advance because of the work necessary to implement them. *Id.* lines 92-98. AT&T's proposed language for section 9.2.5 improperly suggested that SBC Illinois is required to provide demarcation points at non-standard locations deemed "suitable" by AT&T without consideration of all necessary factors. *Id.*, lines 99-100.

As SBC Illinois made clear in its testimony and Initial Brief, it is not SBC

Illinois' position that AT&T has no right to request a non-standard demarcation point. If it does so, however, a project team will need to be assembled to evaluate whether the requested demarcation point is technically feasible. Jarmon Direct lines 111-116. In evaluating whether the requested non-standard point is technically feasible, a number of factors would need to be considered. For example, if AT&T desired access to a UNE in a manner that could interfere or disrupt other carriers or SBC Illinois customers, SBC Illinois would regard that type of request to be technically infeasible. *Id.* lines 120-123. SBC Illinois would also need to evaluate operational concerns, such as ordering, testing (troubleshooting), billing, and database management. Jarmon Direct lines 120-125. For example, a request for a non-standard demarcation point would have to be denied if it does not allow for troubleshooting and maintenance, or might otherwise jeopardize network reliability. *Id.* lines 129-135. Moreover, demarcation points cannot simply be specified at the time of a service order. They have to be developed, engineered, deployed and maintained. New demarcation points must be added to the network as a whole to avoid the risk that a weak link may cause outages and disruptions. *Id.* lines 135-138.

As the owner and operator of the network, SBC Illinois has the ultimate responsibility for maintaining and operating that network in a manner that will enable it to meet its obligations to all of its own customers, including AT&T and other CLECs. As such, SBC Illinois has the responsibility for ensuring that actions are not taken that could jeopardize the integrity and reliability of the network. Accordingly, it is important that SBC Illinois maintain the ability to fully analyze and consider alternative demarcation points as they might actually be requested, without already being obligated to honor any and all requests for new demarcations that AT&T has decided are "suitable." Niziolek Direct lines 393-399.

AT&T did not, in either its Initial Brief, Reply Brief, or Exceptions, address *any* of SBC Illinois' evidence or arguments with respect to section 9.2.5, as summarized above. For the reasons discussed, the PAD was absolutely correct in rejecting AT&T's proposed section 9.2.5 language insofar as it purported to give AT&T right to demand it any demarcation points that it deems to be "suitable," without regard to technical feasibility and impacts on network reliability. The PAD's modification of section 9.2.5 represents a reasonable compromise which addresses the concerns raised by SBC Illinois, and provides that AT&T and SBC Illinois both have a voice in determining whether a non-standard demarcation point is "suitable" based on a proper consideration of technical and operational factors. Accordingly, the PAD's resolution of UNE Issue 5 should be affirmed.

UNE:
ISSUE 8.a: When SBC services are converted to UNE combinations, must SBC guarantee that service to the end user will never be disconnected during conversion?

ISSUE 8.b: What charges may SBC recover for such a conversion?

SBC Illinois concurs with AT&T's proposed "cleanup" modifications to the language for section 9.3.1.2 adopted at page 55 of the PAD. *See* AT&T Exc. 27.

UNE:
ISSUE 10: Should the ICA contain the limitations on an ILEC's obligation to combine which are set forth in *Verizon Comm. Inc.*?

AT&T and SBC have litigated this issue in federal court, and SBC won, in a decision issued just last December. The Commission should adhere to that federal court precedent by accepting the PAD's conclusion that the *Verizon* limitations must be reflected in the parties' Agreement. The issue is purely legal, and the ALJs considered and properly rejected all the arguments AT&T rehashes in its Brief on Exceptions.

In upholding the FCC rules requiring incumbent LECs to combine UNEs for competing LECs, the United States Supreme Court, in *Verizon Comms. Inc. v. FCC*, 535 U.S. 467 (2002) ("*Verizon*"), emphasized that "the duties imposed under the rules are subject to restrictions limiting the burdens placed on the incumbents." 535 U.S. at 535. The Supreme Court then listed those restrictions. Among other things:

- An incumbent's duty to combine UNEs for a competitor "only arises when the entrant is unable to do the job itself." *Id*.
- An incumbent's obligation, when it exists, is only to "perform the functions necessary to combine [the UNEs], not necessarily to complete the actual combination." *Id*.
- The competing carrier "must pay a reasonable cost-based fee for whatever the incumbent does" in order to combine the UNEs requested. *Id*.
- "[T]he incumbent's duty arises only if the requested combination does not discriminate against other carriers by impeding their access [to the incumbents' network], and only if the requested combination is technically feasible." *Id*. (internal quotation marks omitted).

AT&T tries to dismiss these restrictions as mere "discussion" by the Supreme Court. AT&T Exc. 30. Similarly, AT&T called them "dicta" in its reply brief, at p. 49. AT&T is wrong. As Staff recognizes, "the Supreme Court's . . . statements were relied on to uphold the FCC's combination rules (and thus are not truly dicta)." Staff Exc. 11. The *Verizon* limitations on SBC Illinois' obligation to provide UNE combinations to AT&T are controlling federal law as declared by the highest court in the land, and they must be included in the Agreement. If they are not, the Agreement will not comply with the 1996 Act. That self-evident proposition was sustained by the United States District Court for the Southern District of Indiana in a case that arose out of the most recent arbitration between AT&T and SBC in that state.

In the arbitration, the Indiana Utility Regulatory Commission ("IURC") ruled that the parties' interconnection agreement should require SBC Indiana (then Ameritech Indiana) to provide new UNE combinations to AT&T, but did not limit SBC Indiana's duty to so in accordance with the *Verizon* limitations. SBC Indiana challenged the IURC's ruling on that ground, and the district court held that an interconnection agreement that requires an ILEC to provide UNE combinations without regard to the *Verizon* limitations is contrary to the 1996 Act. As the court explained,

> Ameritech is correct that it must not be made to offer new UNE combinations under all circumstances. *See* [*Verizon*], 122 S.Ct. at 1685 ("The duties imposed under the [combining] rules are subject to restrictions limiting the burdens placed on the incumbents."). First, an ILEC must combine elements for a CLEC only when the CLEC is unable to do the combining itself. *Id*. Second, the ILEC must provide only the "functions necessary to combine" the elements, not necessarily the actual, complete combination. *Id*. . . . Third, the CLEC must pay a reasonable fee for the combination. *Id*. Finally, the ILEC's duty to provide new UNE combinations arises only when the requested combinations will not discriminate against other carriers and are "technically feasible." *Id*. . . .
>
> . . . . While the agreement complies with the Act by requiring Ameritech to provide AT&T new UNE combinations, *the agreement does not reflect the limitations on Ameritech's duty as recently set forth by the Supreme Court. In that sense, the agreement is not consistent with the Act.*

Indiana Bell Tel. Co. v. McCarty, 2002 U.S. Dist. LEXIS 24071, *10-11 (S.D. Ind. Dec. 13, 2002) (emphasis added). Accordingly, the district court ordered the parties to reform the agreement to comply with the *Verizon* limitations. *Id*. *11. The same outcome can be expected here if the Commission is swayed by AT&T's or Staff's exceptions on this issue.

The language that the PAD approves for UNE section 9.3.3.9 is compelled by the Supreme Court's *Verizon* decision. It is true, as AT&T states (AT&T Exc. 30), that AT&T's proposed language is taken directly from the FCC Rule. But SBC Illinois' language is taken directly from the United States Supreme Court's authoritative reading of that Rule – *a reading that was the basis on which the Supreme Court upheld the Rule*. Thus, AT&T's contention that the language should not be included in the Agreement is untenable, as the Indiana federal court held.

AT&T argues that if the 1996 Act "required the imposition of limitations that were not reflected in [the] FCC Rule, the Supreme Court would have vacated [the rule]." AT&T Exc. 30. The point AT&T is missing, of course, is that the Supreme Court did *not* conclude that the 1996 Act required limitations that were not reflected in the FCC Rule. Quite the contrary, the Supreme Court concluded that the limitations *were* reflected in the Rule, which is precisely why the Supreme Court decided the Rule passed muster.

AT&T's position that the *Verizon* limitations are not the law is plausible only if one wears blinders when reading *Verizon*. It is correct, as AT&T asserts, that *Verizon* reinstated 47 C.F.R. § 315(c). And it is correct, as AT&T also asserts, that the text of Rule 315(c) does not set forth the *Verizon* limitations. But the conclusion that AT&T draws from these two premises – that there are no *Verizon* limitations – is plainly wrong. What AT&T ignores, and asks the Commission to ignore, is that the Supreme Court interpreted Rule 315(c) to impose combining requirements on incumbent LECs only subject to the limitations identified by the Court. That is the only possible meaning of the Supreme Court's statement that, "[T]he duties imposed under the [FCC's] rules are subject to restrictions limiting the burdens placed on the incumbents." 535 U.S. at 535. For the same reason, Staff's discussion of the context in which the Supreme Court recognized the *Verizon* limitations (Staff Exc. 10-11) ultimately leads nowhere. As Staff ultimately concedes, the Supreme Court relied on those limitations to conclude that the FCC's combination rules are valid, and that means that the limitations "are not truly dicta" (Staff Exc. 11) – rather, they are the law.

AT&T tries to argue that there *should be* no such restrictions (AT&T Exc.31), but all that amounts to is a treatise on why, in AT&T's view, the Supreme Court was wrong. With all respect, this Commission cannot reverse the United States Supreme Court.

Staff, taking a slightly different tack, offers a long explication of what the Supreme Court meant by the *Verizon* limitations. Staff Exc. 11-14. That might be pertinent if the language the PAD approved were language that construed the *Verizon* limitations, because there could then be questions about whether the language did or did not accurately reflect the law as declared by the Supreme Court. But the language the PAD approved does not interpret the *Verizon* limitations; *it simply states them.* As a result, Staff's discussion does not – and cannot – include a single criticism of the contract language the PAD approved, or a single suggestion that that language be modified to more accurately reflect what the Supreme Court said. Thus, the Commission should reject Staff's suggestion that it interpret what the Supreme Court meant when it ruled (for example) that an ILEC's duty to combine elements arises only when the entrant is unable to do the job itself is bad advice. There is no need for the Commission to address that question in order to decide UNE Issue 10, and it would be imprudent, to say the least, for the Commission to venture an interpretation of the Supreme Court's words when there is no need for it to do so. The correct approach is for the Agreement simply to incorporate the Supreme Court's words, without interpreting them one way or the other, which is exactly what SBC Illinois' proposed language does.

AT&T makes much of the "state law basis in Illinois for requiring combinations" (*id*. at 32, as if that could justify a wholesale elimination of the *Verizon* limitations. The state law basis for requiring UNE combinations, however, cannot possibly justify a conclusion that the *Verizon* limitations do not apply to combinations that SBC Illinois is required to provide only under federal law – *i.e.*, combinations that are not ordinarily combined. At the very most, the state law UNE combination requirement could – if the Commission were to apply the Illinois statute in a manner inconsistent with federal law – lead to a conclusion that the *Verizon* limitations do not apply to combinations required by state law – *i.e.*, combinations of elements that are ordinarily combined. As we have explained however (*see* SBC Exc. 18-19), the Illinois statute must be interpreted and applied in a manner that is consistent with federal law, so that the *Verizon* limitations apply to state law combinations as well.

Finally, AT&T tries a scare tactic by repeatedly suggesting that the ALJs' resolution of this issue will lead to case-by-case litigation over the question whether the *Verizon* limitations do or do not pertain to a particular AT&T request for a UNE combination. AT&T Exc. 32, 33. AT&T's prediction is baseless. Much more likely, generally applicable principles will emerge for determining when (for example) AT&T is able to combine elements for itself – including, first and foremost, the generally applicable principle that is the subject of UNE Issue 15. Furthermore, a possibility of future disputes – while a legitimate factor for the Commission to consider when it is deciding an issue based solely on which party's language is most practical and reasonable – is no basis for rejecting language that is compelled by controlling federal law.

In sum, the ALJs "examined thoroughly those portions of the Supreme Court's ruling in *Verizon*] that concern [the] FCC Rules [governing UNE combinations]" (PAD at 60), and correctly determined that the Supreme Court's holding places limitations on SBC Illinois' duty to combine UNEs for AT&T that should be included in the parties' Agreement. The one federal court that has decided this issue – against AT&T, as it happens – has held that an interconnection agreement that does not reflect the *Verizon* limitations is unlawful and must be reformed to include them. The Commission should therefore reject AT&T's and Staff's exceptions to the ALJs' conclusion that this Agreement must reflect those limitations.

UNE:

ISSUE 11.a: **Should the ICA contain language specifically obligating AT&T to follow the FCC's Supplemental Order Clarification when utilizing EELs or does the Parties agreed to language in Section 9.1.1 adequately describe AT&T's obligation?**

ISSUE 11.b: **Is SBC Illinois required to combine UNEs with non-251(c)(3) offerings?**

AT&T argues that Staff's proposed language for section 9.3.3.14, which the PAD adopts, improperly limits SBC Illinois' combining obligation to those network elements "ordinarily combined" in SBC Illinois' network. AT&T proposes that the Commission instead adopt AT&T's proposed section 9.3.3, which AT&T contends "tracks the language of FCC Rule 315(c) and (d)." AT&T Exc. 34-35.

For all the reasons discussed by SBC Illinois in its Brief on Exceptions (pp. 22-25), the Commission should reject both the language proposed by AT&T and the language proposed by Staff for UNE Issue 11.b. In the alternative, if the Commission decides to affirm the PAD's decision to adopt Staff's proposed language, that language should be modified to make clear that SBC Illinois' combining obligations apply only to network elements that have been unbundled.

AT&T's exceptions serve to underscore two of SBC Illinois' arguments on this issue. First, as AT&T's exceptions make clear, the language proposed by Staff for UNE Issue 11.b, and which the PAD designates as section 9.3.3.14, is really a modified version of AT&T's proposed section 9.3.3, which AT&T offered as an alternative to SBC Illinois' proposed section 9.3.3.9, and subsections thereto, to address UNE Issue 10. The PAD, however, resolves UNE Issue 10 by adopting SBC Illinois' proposal, with a revision to section 9.3.3.9. PAD at 60-61. For the reasons previously discussed, AT&T's exceptions to UNE Issue 10 (in which it once again argues for the adoption of its proposed section 9.3.3) are without merit and should be rejected. Adoption of AT&T's proposed section 9.3.3, even with the modifications proposed by Staff, in connection with UNE Issue 11.b, would be inconsistent with the PAD's resolution of UNE Issue 10.

Second, AT&T claims that its proposed section 9.3.3 "tracks the language of FCC Rules 315(c) and (d)," which AT&T quotes at page 35 of its Exceptions. As discussed in SBC Illinois' Brief on Exceptions, however, FCC Rules 315(c) and (d) describe ILECs' combining obligations in terms of "*unbundled* network elements." By contrast, AT&T's proposed section 9.3.3, like Staff's proposed language for section 9.3.314 adopted by the PAD, does not include the word "unbundled" before "network elements" in describing SBC Illinois' combining obligations. Accordingly, neither the AT&T proposal nor the Staff proposal accurately "track" FCC Rules 315(c) and (d). If the Commission deems it appropriate to adopt either Staff's proposed section 9.3.3.14 or AT&T's proposed section 9.3.3 (and it should not adopt either), the language of the section should be revised to add the word "unbundled" before "network elements."

UNE:
ISSUE 13: Should the ICA should contain terms and conditions relative to "pre-existing" and new combinations as proposed by SBC Illinois?

AT&T takes exception to the PAD's decision to adopt SBC Illinois' proposed section 9.3.3.1, which contains the definition of a "preexisting combination" of UNEs. In doing so, however, AT&T has changed its position and makes new arguments and proposals that it did not previously make in this proceeding. Specifically, until now, AT&T has taken the position that the Company's proposed definition of "preexisting combination" should be eliminated in its entirety. *See* Noorani Direct lines 821-858; AT&T Br. 128; AT&T Reply Br. 54; Language Matrix p. 15; Joint Submission of Disputed Language, UNE Issues Matrix, p. 15. In response, SBC Illinois pointed out, *inter alia*, that the language of section 9.3.3.1 is consistent with the definition of "preexisting combination" contained in the Company's UNE-P tariff. Niziolek

Direct lines 725-744; SBC Br. 118. Until now, AT&T never disputed this point. Rather, AT&T argued that no definition of a "preexisting combination" of UNEs should be included in the ICA. Joint Submission of Disputed Language, UNE Issues Matrix, p. 15. Now, in its Exceptions, AT&T proposes, for the first time, its own definition of the term "preexisting combination." AT&T's new proposal should be rejected.

In support of its new proposal, AT&T argues, again for the first time in this proceeding, that "SBC attempts to limit the switch feature availability in certain ports." AT&T Exc. 38. AT&T is apparently referring to the criteria set forth in subsection 9.3.3.1(2)(c) ("with only changes needed in order to change a local switching feature resident and activated in the serving switch and available to the switch port class used to provide service"). As Ms. Niziolek explained, the purpose of this language is to acknowledge that simply changing or adding new features has no bearing on whether a combination is preexisting or not. As long as the other criteria are met, if AT&T requests a new feature or change to the features resident on the existing port of the UNE combination, that combination will be treated as preexisting and, therefore, not subject to the non-recurring charges applicable to new combinations. Niziolek lines 801-809. AT&T now proposes to modify the language of 9.3.3.1(2)(c) to remove the reference to features "available to the switch port class used to provide service." AT&T Exc. 40. It is unclear how that language prejudices AT&T, since the features that can be added to an existing UNE combination obviously must be available in the specific switch port used to provide the service. In any event, AT&T failed to present any evidence supporting its proposal to remove this language.

AT&T also objects to subsection 9.3.3.1(2)(d), which provides that a preexisting UNE-P combination does not include a situation in which, at the time of the order, the end user in question is "served by a line sharing arrangement" or its "technical equivalent, e.g., the loop facility is being used to provide both a voice service and xDSL service." In support of its position, AT&T asserts that "a preexisting UNE platform is still a preexisting UNE platform even if, after the UNE platform is in place, a splitter is inserted to provide data service over the high frequency portion of the loop." AT&T Exc. 38. A UNE platform, however, is by definition, a combination of UNEs, which are network elements provided by *the ILEC*, in this case SBC Illinois. AT&T has agreed, in section 9.2.2.1.1 of Schedule 9.2.2, that SBC Illinois has no obligation to provide AT&T with a line splitter for purposes of line sharing or line splitting. AT&T Arbitration Petition, Appendix C, Sch. 9.2.2. Accordingly, any line sharing or line splitting arrangement involving AT&T would of necessity involve situations in which the splitter is provided by AT&T or another entity *other* than SBC Illinois and, therefore, a line sharing or line splitting agreement cannot, by definition, be considered a combination of SBC Illinois-provided network elements. Niziolek Direct lines 814-827; Chapman Direct lines 1219-1236.

Moreover, as the Company has previously explained, in order to engage in line splitting, the UNE-P arrangement must be taken apart and a splitter installed between the loop and switch port. Chapman Direct lines 1219-1231; *Phase II 271 Order*, Docket 01-0662, ¶ 1599 (stating with respect to Scenario A, in which a UNE-P provider seeks to engage in line splitting for the provision of data service, "[a]s the Commission found in Docket 00-0393, the loop will need to be disconnected from the switch in order to insert a splitter"; *Id.*, ¶ 1723 (finding that, with respect to Scenario A, SBC Illinois has demonstrated that it has in place a "workable," "operational" and "non-discriminatory" "process by the *conversion* of UNE-P to line splitting"). Accordingly, a line splitting arrangement cannot constitute a UNE platform, much less a "preexisting" UNE platform. Contrary to AT&T's repeated insinuations, this conclusion is supported, not contradicted, by the FCC's *Line Sharing Reconsideration Order*.[3] As the Company discussed in its Reply Brief (pp. 57-59), that Order makes it clear that, in order to engage in line splitting, a CLEC utilizing the UNE-P must "*replace* its existing UNE-platform arrangement with a configuration" involving a DSL-capable loop terminated to a DSLAM and unbundled switching with transport. *Line Sharing Reconsideration Order,* ¶ 19 (emphasis added).

Furthermore, even AT&T acknowledges that converting UNE-P to a line splitting arrangement involves "physical work." AT&T Exc. 39. AT&T also acknowledges (for the first time) that SBC Illinois "should be allowed to charge additional or higher charges for new combinations than for pre-existing combinations," since new combinations require physical work. *Id.* at 37. By insisting that line splitting arrangements be incorrectly classified as "preexisting combinations," it is apparent that AT&T seeks to deprive SBC Illinois of the right to recover the costs of the physical work necessary to replace a UNE platform with a line splitting arrangement.

Finally, it should be noted that the substitute language for section 9.3.3.1 proposed by AT&T (Exc. at 40) is a modified version of subsection 9.3.3.1(2). AT&T's proposed language omits a substantial portion of the language of section 9.3.3.1, as approved by the PAD, to which AT&T articulates no objection, including all of the first paragraph of section 9.3.3.1 and subsection 9.3.3.1(1).

For all the reasons discussed, AT&T's exceptions with respect to the PAD's resolution of UNE Issue 13 should be rejected in their entirety.

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[3] *Deployment of Wireline Services Offering Advanced Telecommunications Capability, Third Report and Order on Reconsideration*, CC Docket No. 98-147 (Released January 19, 2001).

UNE:
ISSUE 14: **Whether the ICA should include language stating that SBC Illinois may reserve the right to incorporate subsequent regulatory, judicial or legislative orders that address UNEs and/or the obligation to provide combinations of UNEs, in addition to the change of law provisions covered in Article 29, section 29.4?**

AT&T has taken exception to two aspects of the PAD's resolution of UNE Issue 14. First, AT&T objects to the inclusion of the following language in the Agreement (as section 9.3.2.2):

> The parties acknowledge that the United States Supreme Court in *Verizon Comm. Inc.* relied on the distinction between an incumbent local exchange carrier such as SBC-13STATE being required to perform the functions necessary to combine UNEs and to combine UNEs with elements possessed by a requesting telecommunications carrier, as compared to an incumbent LEC being required to complete the actual combination. As of the Effective Date, there has been no further ruling or other guidance provided on that distinction and what functions constitute only those that are necessary to such combining. In light of that uncertainty, SBC-13STATE is willing to perform the actions necessary to also complete the actual physical combination for those new UNE combinations set forth in the Schedule(s) – UNE Combinations to this Appendix UNE.

As the PAD correctly concludes, that language "accurately reflects the current state of affairs concerning the import of *Verizon v.FCC* on SBC's obligations to combine elements under federal law." PAD at 71. There can be no disagreement about that. The Supreme Court, in enumerating the restrictions on an incumbent's duty to combine unbundled network elements, stated that "the rules specify a duty to 'perform the functions necessary to combine,' not necessarily to complete the actual combination." *Verizon Comms. Inc. v. FCC,* 535 U.S. 467 (2002). Thus, the first sentence of section 9.3.2.2. accurately identifies a distinction that the Supreme Court made. And the second sentence is also indisputably accurate – there has been no further ruling or guidance on that distinction.

AT&T contests the contract language on the ground that AT&T does not in fact acknowledge what the first sentence of section 9.3.2.2 says the parties acknowledge. But the Commission often resolves arbitration issues by imposing contract language that says "the parties agree" to something – when in fact the parties agreed to it only because the Commission told them to. SBC Illinois stipulates that the AT&T acknowledgement in the first sentence of section 9.3.2.2 is not a voluntary acknowledgement. That should take care of AT&T's reservations about that language. If not, the Commission can delete the four words "The parties acknowledge that." It really makes no difference.

AT&T's separate contention that the distinction noted in section 9.3.2.2 has no substantive impact on SBC Illinois' obligations (AT&T Exc. 42) is irrelevant. Indeed, the language the PAD recommends takes pains to make clear that the impact of the distinction remains to be determined. It would be premature for the Commission to decide, as AT&T suggests, that it has none. The Agreement should acknowledge the Supreme Court's distinction and preserve the parties' rights to rely on that distinction once its meaning is fleshed out, which is exactly what the language approved in the PAD does.

AT&T's objection to section 9.3.2.2.1 is even more baseless. As the PAD correctly determined, that section

> sets forth fairly conventional 'reservations of rights' language. In this case, the language is directed to SBC's rights to seek legal review or stay of any decision regarding combinations involving UNEs.

PAD at 71. AT&T objects to the provision on only one ground, namely, that it "implies that the *Verizon* decision conferred substantive rights and remedies that SBC did not previously have and modified its unbundling and combining obligations in one or more respects – fundamental premises to which AT&T vehemently objects." AT&T Exc. 42-43. The problem with AT&T's exception is that section 9.3.2.2.1 does not do what AT&T says it does – indeed, this particular provision does not say or imply *anything* about the meaning or impact of *Verizon*. All it does is reserve the parties' rights to take certain positions.[4]

The Commission should therefore reject AT&T's exception on this issue.

UNE:
ISSUE 15: Under what circumstances is a CLEC able to combine for itself?

AT&T gets off on the wrong foot by saying that "crux of UNE Issue 15 is whether AT&T should be required to combine network elements for itself to provide the UNE-Platform in which it is collocated." AT&T Exc. 45. As we explain below, it is the Commission's resolution of UNE Issue 10, not of this issue, that will determine whether or not AT&T must combine the elements that make up the UNE-P when AT&T is able to do so. The question presented by this issue is much more limited, namely, whether AT&T is able to do so when it is collocated.

1. The Commission should reject AT&T's objection to the PAD's adoption of SBC Illinois' proposed section 9.3.3.9.5.3. (AT&T Exc. 46, third paragraph.)

Assuming the Commission accepts the PAD's conclusion on UNE Issue 10 that the Agreement should reflect the limitations on SBC Illinois' UNE combination duties that the Supreme Court recognized in *Verizon*, the Agreement will provide (in section 9.3.3.5.1) that SBC Illinois is not required to combine UNEs for AT&T when AT&T is able to do so itself. The PAD's resolution of UNE Issue 15 correctly concludes that the Agreement take a modest additional step and provide (in section 9.3.3.9.5.3) that AT&T is able to make a combination

[4] Section 9.3.3.2.1, as approved in the PAD, provides, "Section 3, including any acts taken pursuant thereto, shall not in any way prohibit, limit or otherwise affect, or act as a waiver by either party to this Agreement from pursuing any of its rights, remedies or arguments, including but not limited to those with respect to *Verizon Comm. Inc.*, the remand thereof, or any FCC or Commission or court proceeding, including its right to seek legal review or a stay of any decision regarding combinations involving UNEs. Such rights, remedies, and arguments are expressly reserved by both parties to this Agreement. Without affecting the foregoing, this Agreement does not in any way prohibit, limit, or otherwise affect either party to this Agreement from taking any position with respect to combinations including UNEs or any issue or subject addressed or related thereto."

itself "when the UNE(s) sought to be combined are available to AT&T, including, without limitation: at an SBC-AMERITECH premises where AT&T is physically collocated or has an on-site collocation arrangement." The only conceivable objection to taking that additional step would be if AT&T were not necessarily able to make a combination itself merely because the elements are available to it at an SBC Illinois premises at which AT&T is collocated. AT&T does not assert that objection, however, and cannot – because the indisputable fact of the matter is that if AT&T is collocated at SBC Illinois premises where the unbundled network elements are available, AT&T can combine them. Jarmon Direct lines 284-303; Jarmon Rebuttal lines 40-75. Thus, assuming that the Commission decides, in its resolution of UNE Issue 10, that AT&T must combine elements for itself when it can, there is nothing very dramatic about adding that AT&T can combine elements when it is collocated and the elements are there.

Unable to make the only objection that would make any sense, AT&T instead makes an objection that has nothing to do with this issue. AT&T contends that the PAD's resolution of this issue would relieve SBC Illinois of its state law duty to provide new UNE-P combinations. AT&T Exc. 45. That is dead wrong. It is not this issue, but Issue UNE 10 that calls on the Commission to decide the impact of the *Verizon* limitations on SBC Illinois' state law duties. In other words, the Commission's resolution of Issue 10 either will or will not provide that the *Verizon* limitations apply to SBC Illinois' state law duty to combine, as they do to SBC Illinois' federal law duty to combine. The language that is the subject of *this* Issue – UNE Issue 15 – will merely say that to whatever extent AT&T is required to combine UNEs for itself because it can do so (an extent to be determined under Issue 10), AT&T can do so when it is collocated and the UNEs are available.

Finally, AT&T's contention that section 9.3.3.9.5.3 is inconsistent with the PAD's resolution of UNE Issue 8 (AT&T Exc. 46-47) shows only that AT&T is confused. The UNE

Issue 8 language that AT&T relies on says only that AT&T is not required to collocate in order to obtain UNE-P. That has nothing to do with whether AT&T, *when it already is collocated*, will be required to combine for itself the unbundled network elements that constitute the UNE-P. (AT&T's confusion on this point is genuinely baffling when one considers that SBC Illinois has proposed from the outset that AT&T not be required to collocate in order to obtain UNE-P. *See* SBC Illinois' proposed language for section 9.3.2.2.)

2. The Commission should reject AT&T's newly proposed section 9.3.2.2. (AT&T Exc. 46).

Both parties proposed a section 9.3.2.2. The PAD rejects AT&T's because it is too broad, and rejects SBC Illinois' because it "could be seen as requiring AT&T to combine for itself on UNE-P." PAD at 74. SBC Illinois has taken exception to the rejection of its language, and has urged the Commission to adopt its language as is. SBC Exc. at 25-27. AT&T also takes exception to the PAD's treatment of section 9.3.2.2, and proposes a new, supposedly narrower section 9.3.2.2.

AT&T's newly proposed section 9.3.2.2 should be rejected for two reasons. First, it is not, contrary to AT&T's representation, merely another version of AT&T's previous proposal, narrowed to meet the ALJs' concern. Rather, it is an entirely new proposal. The language AT&T previously proposed for section 9.3.2.2 was:

> **UNE-P not to require collocation in any SBC-AMERITECH facility for any purpose.**

The language AT&T now proposes for section 9.3.2.2 is:

> **AT&T shall not be required to collocate in any SBC Illinois central office in order to purchase the UNE-Platform and AT&T shall not be required, in those central offices in which it is collocated, to combine the network elements itself in order to receive the UNE-Platform**.

Thus, where the AT&T language that the PAD rejected as too broad merely said that AT&T would not be required to collocate in order to obtain UNE-P, AT&T's new, supposedly curative language goes much, much farther, by saying not only that AT&T will not be required to collocate in order to obtain UNE-P, but by *adding* that even where AT&T already is collocated, AT&T does not have to combine network elements in order to receive the UNE-P. This attempted bait and switch (AT&T's exception does not even mention that AT&T is now proposing language that says AT&T is not required to combine when it is collocated; AT&T instead tries to sneak its new proposal past the Commission by including it only in its proposed replacement language) should be roundly rejected.

The second reason for rejecting AT&T's proposal is that it is baseless and unsupported. As we have explained, once the Commission rules in connection with UNE Issue 10 that SBC Illinois is not required to combine UNEs for AT&T when AT&T can do so for itself, it necessarily follows that AT&T must do the combining for itself when AT&T is collocated where the network elements are available.

Accordingly, the Commission should reject AT&T's exceptions on UNE Issue 15 and resolve the issue as the PAD resolves it, subject to the exception set forth in SBC Illinois' Brief on Exceptions at pages 25-27.[5]

[5] Staff's exception on UNE Issue 15, like AT&T's, mistakenly assumes that Issue 15 presents the question whether AT&T should be required to do its own combining when it can. Again, that is the subject of Issue 10, not Issue 15. Staff does not disagree with the proposition that AT&T can combine when it is collocated and the unbundled network elements are available, and that means that Staff offers no basis for rejecting the PAD's resolution of Issue 15.

UNE:
ISSUE 17: Should the Agreement state that SBC will follow OBF EMI guidelines rather than stating the specific detail that may be included in such guidelines, when such detail is subject to change by the OBF forum during the term of the Agreement?

The ALJ's resolution of this issue should remain unchanged because AT&T's exception is both unnecessary and unwarranted.

It is unnecessary because the substantive issue of "what information must be provided" is thoroughly addressed in Comprehensive Billing Issue 3 (which addresses section 9.2.7.4.4) and Comprehensive Billing Issue 4.a (which addresses section 27.14.4). Within the confines of those issues, the PAD fully addresses the substantive requirements concerning the billing information that must be provided by SBC Illinois. UNE Issue 17 does not (and need not) deal with those same substantive issues. Rather, section 9.3.1.3.1 (the subject of UNE Issue 17) deals only with the format in which the billing information provided by SBC Illinois is transmitted to AT&T. As formulated by the PAD, section 9.3.1.3.1 cross references sections 9.2.7.4.4 and 27.14.4, both of which describe the *type* of information that must be provided. Section 9.3.1.3.1. goes on to say that the billing information required by those sections must be provided in "OBF EMI format" and must be retained for one year. It further provides that when OCN must be provided under sections 9.2.7.4.4 and 27.14.4, it will be included in the EMI records "according to industry standards". AT&T's attempt to transform section 9.3.1.3.1 so that it addresses the OCN issue that is fully addressed elsewhere is simply not necessary.

Indeed, AT&T's exception invites the Commission to engage in the type of unnecessary duplication and wasted effort that the PAD wisely avoids. Of course, unnecessary duplication in the Agreement does more than produce wasted effort. It creates a very real danger of contradictory language that could spawn lengthy litigation that consumes the scarce resources of the Commission, Staff and the parties for years to come. As it is currently crafted, section 9.3.1.3.1 does not pose this danger – it merely gives effect to the substantive provisions in section 9.2.7.4.4 and 27.14.4. AT&T's proposed changes, however, would transform the section in ways not contemplated by the PAD.

AT&T's exception is also unwarranted. It is, in fact, a thinly-veiled attempt to reverse the PAD's conclusion on Comprehensive Billing Issues 3 and 4a. AT&T's clear intent is to create an "across the board" obligation for SBC Illinois to provide OCN information to AT&T in all circumstances. This simply cannot be reconciled with the ALJs' resolution of Comprehensive Billing Issues 3 and 4a.

In Comprehensive Billing Issue 3, the PAD correctly concludes that where AT&T is a facility-based carrier, SBC Illinois is obligated to provide the Access Customer Name Abbreviation ("ACNA" information) that identifies the originating carrier and can only be required to provide the OCN if AT&T has a dispute with a third-party carrier and cannot otherwise bill without the OCN. Notably, the PAD rejects AT&T's request that SBC be treated as the originating carrier of any unidentified traffic. PAD at 158-159. AT&T's exception to UNE Issue 17 would reverse this holding by requiring SBC Illinois to provide OCN any time upon request and by treating SBC Illinois as the originating carrier for all unidentified traffic. Similarly, AT&T's proposal would eviscerate the PAD's conclusion in Comprehensive Billing Issue 4.a that SBC Illinois is *only* required to provide OCN when a call originates on an unbundled local switch port and terminates to AT&T on an unbundled local switch port. PAD at 160-161. AT&T's language would require SBC Illinois to provide OCN in all situations – regardless of whether the call originates on an SBC Illinois unbundled local switch port and regardless of whether it is technically feasible to do so. AT&T presents no justification for this radical departure from the conclusion in the PAD, because there is none.

For these reasons, SBC Illinois requests that AT&T's exceptions to UNE Issue 17 be rejected.

UNE:
ISSUE 18.a: Whether SBC is obligated to modify its OSS to accommodate AT&T and its third party agent and their inter-CLEC communication to enable the HBSS to place orders on AT&T's behalf for Line Splitting.

<u>Reply to Staff's Exceptions</u>

Staff raises a "conditional" exception to this issue and requests a change in the PAD *only if* AT&T indicates in its Brief on Exceptions that it is "willing to pay the OSS modification costs necessary" to develop a solution. Staff Exc. 17. If AT&T continues its unwillingness to pay, Staff argues, then the ALJs' current proposed wording in the PAD should not change. *Id.*

AT&T has not indicated in its Brief on Exceptions that it is willing to absorb these costs in any way, and therefore Staff's condition was not satisfied. Accordingly, it appears that Staff and SBC Illinois both support the PAD as it is currently written and SBC Illinois has no further response to Staff on this issue.

<u>Reply to AT&T's Exceptions</u>

AT&T excepts to the ALJs' proposed conclusion on two grounds, neither of which has merit.

First, it is not true, as AT&T argues, that AT&T and Covad must remain on the same LSOG version in order to use the line sharing arrangement AT&T proposes. AT&T Exc. 51. Remaining on the same version of LSOG is one way for AT&T and Covad to use the line sharing arranagment AT&T proposes. That is certainly one possibility open to it, but SBC Illinois outlined three other viable alternatives that would permit AT&T to engage in the partnering arrangement it has in mind. For example, Covad could issue orders using a graphical user interface ("GUI") – the convenient "point and click" interface that is so familiar to users of internet-based services. McNeil Direct lines 473-486. AT&T could also submit orders via electronic data interchange ("EDI"). *Id*., lines 488-499. Third, Covad could program its EDI to process AT&T's orders via the version of LSOG that AT&T uses. *Id*., lines 500-505.

AT&T downplays the efficacy of these solutions, but does not dispute that they would work. AT&T's complaint, boiled down to its essence, is that it does not want to do the work to develop a system to exchange data between itself and Covad, and that – in the absence of such work – the alternatives presented by SBC Illinois do not give AT&T and Covad the same "efficiency and cost-effectiveness" that a single CLEC operating by itself would have. AT&T Exc. 53. That is not a sufficient reason to require SBC Illinois to develop this new functionality for AT&T. AT&T and Covad are free to develop any partnering arrangement they wish, but they bear at least some responsibility to work out among themselves the methods and procedures for efficiently exchanging data between them. It is simply not reasonable for AT&T to demand that SBC Illinois bear the sole responsibility for this problem.

Having said all that, SBC Illinois identified a fourth solution which AT&T witness Webber finds "appealing." Tr. 264. This is the LSP authorization field ("LSPAUTH") solution that is currently scheduled for a March 2004 implementation. Tr. 264. AT&T's sole criticism of this solution is that it does not wish to wait for it until March 2004. AT&T Exc. 53 n. 17. This hardly seems reasonable, given the fact that the Agreement arbitrated in this proceeding will likely not be approved by the Commission until late 2003, and March of 2004 would be a very aggressive implementation date for a contractual obligation to change a key component of the OSS. Moreover, deployment of LSPAUTH in a release prior to March, 2004 would inevitably delay the introduction of other OSS functionalities that are highly desired by the CLEC community. Tr. 265. The bottom line is that the capability does not yet exist and – in the world of OSS system modifications – March 2004 is an aggressive implementation date.

For all of the reasons articulated in SBC Illinois' Initial Brief, the prudent course is to sustain the resolution of UNE Issue 18.a in the PAD and to allow established industry processes the opportunity to develop the solution for this issue. SBC Br. 135-136.

Second, AT&T argues that the "same version policy is discriminatory and anticompetitive." AT&T Exc. 51-52. This is wrong for several reasons, as SBC Illinois explained in its Reply Brief at 73-74. To begin with, SBC Illinois does not have a "same version" policy at all. What AT&T complains about is the simple fact that if Covad submits an order on AT&T's behalf using LSOG version 4, the record will be returned by SBC Illinois in LSOG version 4, and if AT&T is using LSOG version 5.02, it may not be able to make sense of the record. SBC Illinois has done nothing wrong in this scenario. In fact, it has simply followed CLEC instructions by processing orders in the LSOG version in which they were submitted.

Equally important, the differences between line sharing and line splitting do not create the "discriminatory and anticompetitive" behavior that AT&T alleges. The FCC has established separate processes whereby CLECs can engage in line sharing, on the one hand, or line splitting, on the other. In each case, the FCC-defined process allows CLECs to offer advanced services more easily. SBC Illinois has faithfully implemented the requirements of these FCC-mandated processes and any differences between them is attributable to differences in the processes themselves – not any discriminatory or anticompetitive conduct by SBC Illinois. In a line splitting arrangement, for example, a CLEC purchases an unbundled loop and "splits" the loop to create separate voice and data paths. In AT&T's line splitting scenario, two CLECs can submit orders to SBC Illinois for the same loop. One is the customer of record, but the other is equally entitled to submit orders to add, change or disconnect service. Line sharing, on the other hand, is a completely different arrangement in which SBC Illinois provides voice services on a copper loop but "shares" the high frequency portion of the loop with the CLEC so that the CLEC may use it to provide DSL service to an end user. With line sharing there can be only one CLEC submitting orders to SBC Illinois. These two processes are fundamentally different and AT&T's claim that the difference between them is discriminatory has no merit.

For all these reasons, SBC Illinois respectfully requests that the ALJs reject AT&T's exception on this issue.

UNE:
ISSUE 27: Should the reciprocal compensation terms and conditions contained in Article 21 apply to ULS-ST reciprocal compensation?

All agree that this issue is identical to Intercarrier Compensation Issue 1. For the reasons set forth in SBC Illinois' reply to AT&T's exception to Intercarrier Compensation Issue 1, AT&T's exception to UNE Issue 27 should be rejected. This resolution is consistent with the position of Staff in this matter. Staff Br. 69-72.

UNE:
ISSUE 28: Should SBC Illinois be required to provide to AT&T the OCN of 3rd party originating carriers when AT&T is terminating calls as an unbundled switch user of SBC Illinois?

AT&T's exception on this issue incorporates by reference its exception on Comprehensive Billing Issue 4, and SBC Illinois' response therefore incorporates by reference its response on that issue.

UNE:
ISSUE 29: How should reciprocal compensation rate elements be structured?

All agree that this issue is identical to Intercarrier Compensation Issue 1. For the reasons set forth in SBC Illinois' reply to AT&T's exception to Intercarrier Compensation Issue 1, AT&T's exception to UNE Issue 29 should be rejected. This resolution is consistent with the position of Staff in this matter. Staff Br. 69-72.

In response to AT&T's request for clarification of the rate structure at issue in UNE Issue 29, SBC Illinois states that this only becomes important if the ALJs for some reason reverse themselves and adopt AT&T's position that there should be a separate reciprocal compensation rate for calls terminated over ULS-ST. The ALJs properly rejected AT&T's position on this issue, so the question of the proper rate structure for such a charge should never be reached.

Having said that, if the ALJs were to reverse themselves, then UNE Issue 29 presents the question whether reciprocal compensation payments for calls terminated over ULS-ST should be charged on an MOU basis or under the "bifurcated" rate structure originally proposed by SBC Illinois. On that issue, SBC Illinois agrees with AT&T that the parties have settled on an MOU rate structure for reciprocal compensation payments, as reflected in the Third Joint Notice Of Settled Issues, which resolved Intercarrier Compensation Issues 3, 5 and 8(b) as well as Pricing Issue 3. Accordingly, SBC Illinois revises its proposal for section 9.2.7.5 to delete the bifurcated rate structure. SBC Illinois' revised language for section 9.2.7.5 is as follows:

> 9.2.7.5 IntraLATA and InterLATA Toll Rate Application
>
> When ULS-ST is used to make or receive interLATA (including PIC) or intraLATA (including LPIC) toll traffic and that traffic is routed through **SBC-AMERITECH** tandem switch(es) and transmission facilities, **SBC-AMERITECH** will charge usage-sensitive Common Transport and Tandem Switching Rates in addition to other applicable ULS-ST charges. However, when that traffic is routed to and/or from an Interexchange Carrier directly connected at the **SBC-AMERITECH** end office providing that ULS port, the Common Transport and Tandem Switching rates will not apply to such traffic. (the following rate elements could apply depending on type of call:
>
> a) ULS-ST Blended Transport Usage
>
> **Reciprocal Compensation**
> ULS-ST SS7 Signaling Transport

Note that there is still a difference in language proposed by AT&T ("ULS-ST Reciprocal Compensation" and SBC Illinois "Reciprocal Compensation"). Consistent with the PAD, SBC

Illinois' language should be adopted because there should not be a separate reciprocal compensation rate for traffic terminated over ULS-ST. PAD at 112-113.

UNE:

ISSUE 30: Should SBC be required to administer LIDB information provided by AT&T?

ISSUE 33: Should the LIDB-AS schedule be part of the interconnection agreement?

AT&T once again seeks a "clarification" which would fundamentally change the resolution of the issue. For UNE Issues 30 and 33, AT&T proposes language that would delete any reference to the LIDB-AS Appendix, and therefore, would exclude the LIDB-AS Appendix from Agreement. This is directly contrary to the ALJs' correct conclusion that the LIDB-AS Appendix should apply in those situations where AT&T uses SBC Illinois' unbundled local switch ports. The ALJs specifically conclude that the "specific terms contained in the LIDB-AS Appendix are appropriately contained in the ICA." PAD 91. The PAD states this even more plainly in the conclusion for UNE Issue 31: "As explained in UNE Issues 30 and 33, the Commission believes that the LIDB-AS Appendix should be contained in the ICA". PAD 92. AT&T's "clarification" is really a Trojan horse intended to exclude the LIDB-AS Appendix from the Agreement for *all purposes* and simply cannot be reconciled with the PAD's clear conclusion to the contrary.

AT&T argues that there is "no reason to include the LIDB-AS appendix" (AT&T Exc. 58), but that makes no sense because AT&T agrees that it must use SBC Illinois as a LIDB database provider when it uses SBC Illinois' unbundled local switch ports. Clearly, there must be some terms and conditions that apply to this situation, and the PAD properly concludes that the terms and conditions are those set forth in the LIDB-AS Appendix. PAD 90-91. AT&T's disingenuous exception to this conclusion should be summarily rejected.

UNE:
ISSUE 31: What interfaces are used to administer data when AT&T resells data to a third party?

AT&T's exception for UNE Issue 31 is identical to its exception for UNE Issue 30 and 33. In both cases, AT&T claims that it merely seeks to "clarify" that the LIDB-AS Appendix should not be included in the Agreement. AT&T Exc. 59. As discussed immediately above, this is directly contrary to the ALJ's correct conclusion that the LIDB-AS Appendix should be included in the Agreement because it protects end user privacy and because it creates a uniform system which allows CLECs to administer their LIDB data when using an unbundled local switch port from SBC Illinois. PAD at 92.

For these reasons, and for the reasons set forth in SBC Illinois' reply to UNE Issues 30 and 33, AT&T's exception should be rejected.

UNE:
ISSUE 32.a: Should SBC be required to provide access to SBC designed AIN features, functions and services?

ISSUE 32.b: Should Access to AIN be provided pursuant to a BFR with all terms and conditions and pricing negotiated pursuant to that BFR?

SBC Illinois has previously responded to each argument raised by AT&T in its exceptions to these issues. SBC Br. 165-172; SBC Reply 93-97. Rather than repeat all of those arguments here, SBC Illinois refers the Commission to its briefs and summarizes the salient points below.

First, AT&T argues that since SBC Illinois eliminated the BFR process for SCE access, SBC Illinois implicitly concedes that it could also eliminate the BFR process for deployment of new AT&T AIN services in the SBC Illinois network. AT&T Exc. 61-62. This argument overlooks the complexity involved in deploying a new AIN service in the public switched network. As Ms. Chapman explains, each CLEC-developed service is unique and will interact differently with SBC Illinois' network. Chapman Direct lines 1064-1072. Since SBC Illinois does not know what AIN services a CLEC may develop, and since SBC Illinois certainly cannot tell a CLEC what AIN services to design or how to design them, SBC Illinois must rely on extensive service logic testing and field/integration testing to be sure that the CLEC AIN service will operate properly on the public switched network. *Id*.

The scope of this testing depends on the type of service the CLEC develops and on how broadly (*e.g*., in how many central office switch types) the CLEC wants to deploy it. None of this can be "standardized", as AT&T requests, by establishing fixed time frames and prices. Rather, the time required to perform these crucial tests, and the cost incurred to do so, will vary widely from case-to-case. Moreover, SBC Illinois has never been requested to perform these activities, so it has no real-world experience from which to make reasoned projections about a "standardized" price or "standardized," interval.

In order to provide a sense of the activities required for deployment, SBC Illinois included in the record its CLEC guide to designing and deploying AIN-based services. Chapman Direct, Sch. CAC-2. The following excerpts are from pages 10-11 of that guide:

> 3.3 <u>Service Logic Testing</u>
>
> Service logic testing will determine whether CLEC's logic is compatible with SBC's network, whether such logic integrates properly with the needed support systems (like records, billing systems, and peripherals), and whether such logic has undesirable feature interaction with non-CLEC end users. The amount of time to provide Service Logic Testing will depend upon the complexity and completeness of CLEC's initial service logic as well as the types of logic corrections and enhancements developed by CLEC as a result of this testing.
>
> * * *
>
> 3.4 <u>Field And Integration Testing</u>
>
> The purpose of the Field Test is to perform field integration testing for each combination of systems CLEC wants its service to run on (e.g., various switch

types, SCP nodes, billing systems, etc.) as well as validate, in a live environment, the results of the Service Logic Testing in a lab environment.

Actual Field and Integration Testing will depend on the Service Logic CLEC has created. However, the types of Field and Integration Testing SBC will generally conduct include:

- Testing business processes (like methods and procedures)
- Service order interaction
- Billing System interaction and output
- Maintenance procedures including troubleshooting procedures
- Operational aspects of service logic
- CLEC's ability to preorder, provision, maintain, and bill service to its own end user
- SBC's ability to preorder, provision, maintain, and bill service to CLEC

This description of deployment activities illustrates the complex analysis needed to deploy AIN services in the network and explains why the BFR process is perfectly appropriate for this task.

Second, AT&T argues that Commission precedent disfavors use of the BFR Process, AT&T Exc. 62-63, but just the opposite is true. The BFR process has been in place in Illinois since 1996 and the Commission has endorsed that process on no fewer than four occasions. Nov. 26, 1996 Arbitration Decision, Docket Nos. 96-AB-003/96-AB-004, at 50 (upholding 30-day period for SBC Illinois to respond to a BFR with a preliminary analysis); Dec. 17, 1996 Arbitration Decision, Docket No. 96-AB-006, at 30 (upholding 120-day maximum interval for final response to BFR); Aug. 8, 2001 Arbitration Decision, Docket No. 01-0338 at 23 (finding that BFR process was appropriate); March 21, 2001 Arbitration Decision, Docket No. 00-0769, at 15-16 (same). Since CLECs can create any type of AIN service and can request that it be deployed in just a few locations within SBC Illinois' network or across the entire state, the BFR process is perfectly suited for deployment of AIN-based services.

Third, AT&T argues that results in Texas and California should be blindly followed in Illinois. AT&T Exc. 60. This argument does not warrant serious consideration. The Texas case[6] is easily distinguishable from the facts before this Commission because in Illinois – unlike Texas – there is no requirement to go through a BFR process before gaining access to the SCE. This distinction makes all the difference because, in this case, AT&T has the exact type of BFR-free access to the SCE that it requested. More fundamentally, the Texas case is wrongly decided because it mistakenly assumes that Privacy Manager® must be provided as a UNE unless and until the Commission determines that CLECs have access to the SCE. There is, in fact, no such linkage under FCC Rule 51.319(e). As for the result in California, AT&T is referring to a private arbitration – not a decision of the Public Utilities Commission – and therefore it has absolutely no bearing on this proceeding.

Fourth, AT&T returns to its old refrain that it should have access to Privacy Manager® as a UNE unless and until SBC Illinois provides a "standardized" deployment process for AIN-services. AT&T Exc. 63. It is difficult to avoid the impression that what AT&T is really after is access to Privacy Manager® and is not really interested in using SBC Illinois' SCE to create its own AIN-based services. Indeed, this impression is strengthen by the fact that AT&T has never submitted a formal request to access SBC Illinois' SCE/SMS. Chapman Direct lines 1099-1095. Regardless of AT&T's real motivation, the ALJs properly concluded that access to Privacy Manager® would directly contradict FCC Rule 51.319(e)(2)(ii). PAD at 95. The ALJ's also properly concluded that competition is best served when carriers have incentives to develop their *own* AIN-based services. PAD at 95. AT&T's request that it simply be given access to SBC Illinois' AIN-based services at TELRIC prices does not serve this policy goal.

For all these reasons, AT&T's exception to UNE Issues 32(a) and 32(b) should be rejected.

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6 *SWBT/MCI Metro Arbitration, Docket No. 24552.*

COLLOCATION:
ISSUE 1: **Should AT&T have the right to access and maintain virtually collocated equipment?**

The fallacy of AT&T's position on this issue is clear from the first sentence of its exception. There, it claims that AT&T has a "right" to access its virtually collocated equipment. AT&T Exc. 67. As it did in its opening and reply briefs, AT&T ignores the governing FCC regulations and this Commission's own rulings.

This Commission has recently and unequivocally decided this issue, as the ALJs recognized in the PAD. Neither AT&T or any other CLEC has a "right" to access its virtually collocated equipment. In its decision in Docket 99-0511, the Commission held that:

> Mandating that CLECs have access to virtually collocated equipment conflicts with the FCC's current conclusions on this issue. In addition, the Commission agrees with Ameritech that the FCC intends for virtually collocated equipment to be maintained by the ILEC.

PAD at 100.[7] The ALJs thus properly concluded that "in light of the [sic] our decision in Docket 99-0511 and the FCC's stance on the matter, the Commission rejects AT&T's contention that we should direct SBC to allow AT&T to continue to access virtually collocated equipment." *Id.*

AT&T presents no argument to challenge the clear holding of the Commission or the FCC on this issue. Instead, it attempts to contort language from the 99-0511 Order about voluntary negotiations to support its demand for access to virtual collocation arrangements. AT&T Exc. 67-68. AT&T knows full well that the language it quotes is inapplicable. The issue presented here is part of a contested arbitration proceeding between AT&T and SBC Illinois; this is not about contract language to which the parties are seeking to voluntarily agree. Nor is this argument anything new – the ALJ explicitly rejected it in the PAD recognizing that "it is clear

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[7] In its initial brief, SBC Illinois provided numerous citations to FCC ruling that CLECs are not entitled to access virtually collocated equipment. *See* SBC Br. at 180-181.

the parties were unable to voluntarily negotiate for AT&T's access to VCE [virtually collocated equipment]." PAD at 100.

The rest of AT&T's arguments are nothing more than a rehash of the arguments it raised in its testimony and briefing, which were rebutted by SBC Illinois and properly rejected by the ALJs. In rejecting AT&T's arguments, the ALJs correctly concluded that "this decision reflects changes in the telecommunications environment since the adoption of TA '96." PAD at 100. The PAD properly concludes that the central office of 1997 is markedly different than the central office of today. *Id.* The increase in the number of CLECs has made central offices much busier and escorts are not adequate to maintain the security and integrity of central offices. *Id.*[8] AT&T's reliance on the escort provision in SBC Illinois' physical collocation tariff, (AT&T Exc. 68-69), fares no better here than it did in AT&T's post-hearing brief. This issue is about virtual collocation, not physical collocation, and the security issues at play in a virtual setting are significantly different than those in a physical setting. *See* SBC Br. 181.

Finally, and for the first time in this proceeding, AT&T presents its second choice position. If the Commission does not grant it full access to all virtual collocation arrangements (now and in the future), AT&T wants access to all virtual arrangements it presently has. AT&T Exc. 79. Yet AT&T offers no logical explanation why existing arrangements should be treated differently than new ones. The same legal standard governs. And the same network integrity, security and central office congestion concerns exist. Indeed, it is likely that the central offices where AT&T is already collocated are among the most congested; thus the network integrity and

[8] AT&T repeats its erroneous assertion that there have not been any security incidents involving AT&T. The record demonstrates otherwise. SBC Illinois witness Theresa Bates testified that there have been numerous security violations by AT&T and other CLECs, including unauthorized access to restricted areas, performing unauthorized activities on SBC-owned equipment, working in SBC's premises without proper identification, and the unauthorized use of SBC portable equipment and property. Bates Direct lines 138-149. AT&T did not challenge any of this testimony.

security concerns are even more pronounced. The Commission should rejects AT&T's fallback position on the same grounds as the ALJs rejected AT&T's initial position.

COLLOCATION:
ISSUE 2.b: Can AT&T locate equipment on its own side of a condo building to access UNEs by cabling to SBC, in place of a collocation?

AT&T suggests that its exception here is just a "clarification." AT&T Exc. 73-74. It is not. The ALJs ruled that the parties existing contract language governing existing condominium arrangements should be included in the new Agreement. PAD 102.[9] The ALJs further noted that AT&T agreed in its Reply Brief that such language was acceptable. *Id.* Indeed, AT&T also said in its Initial Brief that the existing Illinois language was acceptable. AT&T Br. 187.

This language adopted by the ALJs comes from the testimony of AT&T's own witness, Danial Noorani. Noorani Direct 15-16. It was then repeated in AT&T's Initial Brief. AT&T Br. 188. At no time did AT&T propose this "clarifying language." In fact, AT&T stressed that it was only proposing one change to the existing language. AT&T Br. 188; Noorani Direct 16.

It is far too late in this proceeding for AT&T to change its proposed language. Certainly, it has not presented any testimony or argument as to why this additional language should be added. AT&T's exception should be denied.[10]

COLLOCATION:
ISSUE 3: Should the ICA terms and conditions allow AT&T to have access between AT&T's collocation space and SBC's distribution frame to verify and test intra-office wiring?

AT&T takes exception to the ALJs' compromise decision here, in which the ALJs conclude that AT&T shall have the option to request that its responsibility for installation, testing and/or maintenance of intra-office wiring terminate at a location other than the MDF. AT&T

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[9] While SBC Illinois did not agree with the ALJ's conclusion, SBC Illinois chose not to file an exception.

[10] AT&T also misstates the record when it says there are three condominium arrangements in Illinois. There are only two, according to the agreed-to language in Section 16.10 of the Agreement.

apparently objects to the notion that, if AT&T so elects, the parties shall mutually agree on the location where such responsibility will end.

AT&T's exception misses the mark, erroneously resting on the argument that AT&T is entitled to interconnect at any technically feasible point. AT&T Exc. 73. That is irrelevant to Collocation Issue 3, because the disputed language that is the subject of this issue does not relate to points of interconnection. What the ALJs have ruled is that the parties will mutually agree on a location, accessible to both parties, where responsibility for installation, testing and/or maintenance of intra-office wiring will transfer from one party to the other. It makes sense that such a location shall be mutually agreeable to the parties. The location must be accessible to both parties (for instance, it could not be in the center of the CLEC collocation cage.) In addition, as the ALJs recognized, an ILEC has legitimate safety interests and a right to protect its network. PAD at 100, 104. AT&T's language would allow it to require SBC to grant AT&T access at any point between the MDF and the collocation cage (including immediately next to the MDF), regardless of these legitimate safety concerns. The ALJ-ordered language properly protects against that.

In its Brief on Exceptions, AT&T makes all sorts of accusations (unsupported) about SBC Illinois not negotiating in good faith. AT&T Exc. 73. First, it is unlikely that this issue will come up at all. AT&T and other CLECs have admitted that it is extremely infrequent that bad cabling occurs between the MDF and a CLEC's collocation equipment. Bates Direct lines 528-537, 633-639. In any event, SBC Illinois permits approved vendors to access the MDF as part of installation testing. *Id.* lines 539-563. Second, it bears noting that SBC Illinois already permits a CLEC to request an optional point of termination (POT) bay for its collocation arrangements. The POT bay can be used as a point of termination that the CLEC may access to perform testing and verification. Bates Direct lines 695-699.[11] Finally, if a dispute ultimately arises and the parties cannot mutually agree on a location where responsibility will transfer, one or both parties can invoke the Agreement's dispute resolution clause. That will adequately address any concerns AT&T might have about the ALJ-ordered language.

LPN:
ISSUE 1: Should the ICA contain Hot Cut language over and above that covered in the ICA's OSS Schedule 33.1?

All of AT&T's arguments were properly rejected by the PAD and there is no basis to grant the relief AT&T seeks in its exception.

First, AT&T argues that the need for "additional labor" charges for coordinated hot cuts ("CHC") has not been established. AT&T Exc. 76. AT&T simply overlooks the testimony of SBC Illinois witness Carol Chapman, who explained that a coordinated hot cut is an optional service in which an SBC Illinois technician takes extra time to make sure that both companies perform a service cut over at the same time. Chapman Direct lines 1518-22. The SBC Illinois technician coordinates with the CLEC to make sure that SBC Illinois does not remove the switch routing instructions from the donor switch until it has received the CLEC's verbal instructions to do so. *Id*. The CHC charge does not apply in every situation where a customer migrates from SBC Illinois to AT&T. For example, no extra charge applies when AT&T requests a "frame due time" in which the parties cutover service at a pre-arranged time. Chapman Direct lines 1523-26. Similarly, AT&T points out that the Enhanced LNP process – when it is deployed later this year – will eliminate the need for CHC on simple standalone LNP orders, so AT&T will be able to coordinate the cutover of those migrations without using the extra CHC services from SBC

[11] SBC Illinois believes that POT bays unnecessarily add additional test points in the network. SBC Illinois does not require them; nevertheless, many CLECs do have POT bays in SBC central offices today. *Id.* lines 657-660.

Illinois' technicians. The CHC process is completely optional, but when AT&T asks to use it, it should pay for the time of the SBC Illinois technician needed to perform the service.

Second, AT&T asserts that it would be better to develop a non-recurring charge for this function. AT&T Exc. 77. The PAD properly found that a non-recurring charge is not appropriate in this situation, and rightly so. PAD at 108. "Additional labor" costs for CHC will vary from job-to-job – and since a part of that variability depends on the diligence of the CLEC – it is only fair that CLECs pay for the actual technician time they use. As Ms. Chapman explains:

> In some cases, the coordination effort may take very little time. In other cases, it can take a great deal of time. This may happen, for instance, when the CLEC is not ready at the originally requested time or if a large volume of orders are involved.

Chapman Direct lines 530-533. The PAD appropriately follows a "cost causer pays" approach on this issue. AT&T's requested non-recurring charge would result in a flat rate, but because the time associated with a CHC is dependent upon the requesting CLEC, such a charge would make *efficient* CLECs bear costs caused by *less efficient* CLECs.

Furthermore, AT&T's request seems calculated only to introduce unnecessary delay (by requiring an 11-month contested case proceeding) and complexity (contested cases concerning cost studies inevitably find away of becoming complex). There is simply no reason to engage in such a drawn-out process when SBC Illinois' proposal is fair and reasonable on its face. AT&T witness Finney offers another reason not to go down this road. He points out that SBC Illinois' Enhanced LNP process will eliminate the need for AT&T to request coordinated hot cuts on simple standalone orders, Finney Direct lines 50-56, so AT&T should have no serious objection to the PAD's resolution of this issue.

Finally, AT&T once again objects to the use of labor rates in the federal access tariff. AT&T Exc. 77-78. SBC Illinois demonstrated, however, that the labor rates in its federal and state tariffs are virtually identical. SBC Reply 105. Accordingly, there is no reason to object to the use of the labor rates in the FCC tariff.

For all of these reasons, the PAD correctly resolves LNP Issue 1 and the Commission should reject AT&T's exception to this issue.

LNP:
ISSUE 2: Must SBC Illinois include Enhanced LNP process language in the agreement.

AT&T has nothing new to say on this issue and its exception is merely a rehash of arguments it made in its Brief. AT&T alleges that the PAD ignores the fact that the Enhanced LNP process is scheduled to be implemented in Illinois as early as September, 2003. This is wrong – the PAD does recite this fact in the section summarizing AT&T's position. PAD at 106. Similarly, AT&T criticizes the PAD for ignoring the fact that an Enhanced LNP process was rolled out in California earlier this year, but again, the PAD properly acknowledges this fact in its summary of SBC Illinois' position. PAD at 107. AT&T makes one last attempt to justify its position that the Agreement should contain language for a process which is not yet deployed in Illinois, but AT&T is unable to overcome the basic fact that the Enhanced LNP process in Illinois has not been fully developed and that it is, therefore, too soon to set out strict contract language describing the process. Chapman Direct lines 1654-62. The PAD permits the Parties to incorporate appropriate language as soon as the Enhanced LNP process has been finalized and deployed, and this resolution is perfectly reasonable.

INTERCARRIER COMPENSATION:
ISSUE 1: Should the terms of this article apply to traffic where AT&T is using ULS-ST provided by SBC Illinois?

AT&T asks the ALJs to reverse themselves on the conclusion that normal reciprocal compensation rates apply to calls terminated over ULS-ST. The ALJs should reject this request because it is based on an assertion which is patently false.

AT&T's claim that the Commission established a TELRIC-based rate for terminating ULS-ST traffic ($ .0011) in Docket Nos. 96-0486/0569. AT&T Exc. 83. This is flatly wrong. Docket Nos. 96-0486/0569 had nothing to do with establishing different reciprocal compensation rates for calls terminated by via ULS-ST. It established rates for reciprocal compensation and rates for unbundled local switching – but *did not* establish a separate reciprocal compensation rate for calls terminated over ULS-ST. In fact, it did not even consider the issue whether a separate reciprocal compensation rates for such calls would be appropriate. AT&T does not (and cannot) cite to a specific portion of the 96-0486/0596 Order, or to any ICC Order or SBC Illinois tariff, to support its assertion.

As AT&T itself recognizes in its testimony and its Initial Brief, the rate of $ .0011 for ULS-ST reciprocal compensation is an outgrowth of the Merger Order (Docket No. 98-0555) that required SBC Illinois to file a permanent ULS-ST offering by October 8, 2000. AT&T Br. 208; Rhinehart Direct 89-104. SBC Illinois duly filed the permanent ULS-ST tariff in August, 2000 and on that occasion, for the first time, included a separate reciprocal compensation rate for calls terminated over ULS-ST. That tariff was investigated in Docket No. 00-0700.

The chronology is made clear by the "Introduction and Procedural History" section of the Order in Docket No. 00-0700, which provides as follows:

> On September 23, 1999, the Commission entered an order in Docket 98-0555 ("Merger Order") that, inter alia, required Ameritech to file tariffs implementing an interim solution to shared transport and to follow that up with a tariff outlining the terms and conditions of a final shared transport solution. On August 24, 2000, Ameritech filed its proposed final shared transport solution, described as Unbundled Local Switching with Shared Transport ("ULS-ST"), which was subsequently modified and allowed to go into effect on October 10, 2000.

SBC Illinois is mystified by AT&T's assertion that the $ .0011 rate somehow originated in Docket Nos. 96-0486/0569. AT&T Exc. 83. This assertion stands in sharp contrast to

AT&T's representation in its Brief that the history of this issue begins with Docket No. 98-0555. AT&T Br. 208. The truth is that the rate of $.0011 was exclusively the product of brand-new cost studies submitted by SBC Illinois in its August, 2000 tariff filing (that was reviewed in Docket No. 00-0700) using new cost models, including the Ameritech Regional Partners In Provisioning Switch Model ("ARPSM"). The Commission made several significant revisions to SBC Illinois' cost study and rejected the Company's reciprocal compensation proposal, Docket No. 00-0700 Order at ¶ 82-89, so AT&T's argument that the $.0011 rate somehow survives the Commission's Order in Docket No. 00-700 defies logic.

In light of all this, AT&T's admission that "there was no evidence in the record to determine the costs and rates for transport and termination of [ ] ULS-ST traffic" is fatal to its case. AT&T Exc. 84. AT&T makes this admission in reliance on its mistaken belief that the Commission had already determined, in a different docket, that there *should* be a separate reciprocal compensation rate for traffic terminated over ULS-ST and that the correct rate was $.0011. This is simply wrong, as described above. Staff agrees. Staff Br. 71-72; Staff Ex. 1.0, p. 56. Since there is no evidence to support AT&T's claim for a *different* reciprocal compensation rate for calls terminated over ULS-ST, AT&T's exception should be rejected.

AT&T's exception to this issue highlights the need to correct the PAD's discussion of the Order in Docket No. 00-0700. The PAD mistakenly asserts that "the reciprocal compensation rates for ULS-ST that were in place prior to that decision should have remained", PAD at 113, but there were no such rates. AT&T's exception builds on this mistake and attempt to construct, by revisionist history, a pre-00-0700 obligation that never existed. Given these circumstances, the prudent course would be to revise the PAD to find that the Order in Docket No. 00-0700 did indeed instruct SBC Illinois to delete the language for a separate reciprocal compensation rate for local traffic terminated over ULS-ST *and* that the effect of the 00-0700 Order was to restore the *status quo ante* in which there was a single reciprocal compensation rate in the tariff[12]. In the alternative, the ALJs can merely delete any discussion of the 00-0700 Order and rely exclusively on the correct conclusion that there is no evidence to indicate that charges for transport and termination should vary according to whether or not AT&T uses ULS-ST.

Finally, AT&T complained about observations in the PAD concerning symmetrical rates. This is much ado about nothing. The PAD acknowledges AT&T's position that its proposed rate of $.0011 should apply reciprocally and symmetrically between the Parties[13]. That, however, is essentially irrelevant to the central finding of the PAD that there is "no evidence to indicate that charges should vary according to whether or not AT&T uses ULS-ST to originate traffic". PAD at 114. That is an unassailable conclusion that resolves this issue in favor of SBC Illinois.

For all these reasons, AT&T's exceptions to Intercarrier Compensation Issue 1 should be rejected.

INTERCARRIER COMPENSATION:
ISSUE 2.a: Can the terminating Party charge exchange access to the originating Party for traffic within the originating Party's local calling area?

AT&T takes exception on Intercarrier Compensation Issue 2.a (*see* AT&T Exc. 85, 90), but presents no argument in support of its exception and offers no replacement language for the PAD on this issue (*see id.* at 90-94). AT&T has therefore waived its right to ask the Commission to reject the PAD's resolution of Intercarrier Compensation Issue 2.a.

[12] This is proven by the fact that SBC Illinois' current tariff contains a single reciprocal compensation rate that applies regardless of whether the call terminated over ULS-ST or not.

[13] Although AT&T argues that its proposal is reciprocal and symmetrical, it qualifies that assertion in footnote 24 on page 86 of its Brief on Exceptions. There, AT&T says that it may "perform additional functions to terminate the call" entitling it to additional compensation. Thus, it is still not clear whether AT&T's proposal is truly symmetrical or not.

INTERCARRIER COMPENSATION:
ISSUE 2.b: How should ISP-bound, FX-like traffic be compensated pursuant to the rules established by the FCC in the ISP Remand Order?

Our discussion of this issue departs from our practice throughout this brief by repeating in some detail the arguments set forth in SBC Illinois' Initial Brief. We take this approach because of the importance of the issue and because it is hard to tell from AT&T's brief exactly what the issue is about.

The starting point for this issue is actually the next issue, Intercarrier Compensation Issue 2.c, on which the ALJs adhered to the Commission's established rule and decided that a call that is carried from one local exchange area to another is not subject to reciprocal compensation merely because the called party has FX service that makes the call "look local" to the network. Assuming the Commission sustains the PAD's resolution of Issue 2.c, it should reject AT&T's attempt on Issue 2.b to carve out an exception for calls to Internet Service Providers ("ISPs"). That is, the Commission should leave intact the current regime in Illinois, whereby reciprocal compensation does not apply to FX calls generally, *including* calls to ISPs with FX numbers.

The calls that are the subject of this Issue 2.b are calls to Internet Service Providers that have FX numbers. Such calls fall simultaneously into two categories, each of which has important implications for intercarrier compensation and each of which has been the subject of extensive arbitration and litigation before this Commission and elsewhere: They are FX calls *and* they are ISP-bound calls. The following propositions are therefore pertinent:

- This Commission has held for years that calls terminated to FX numbers are not subject to reciprocal compensation, but instead are to be exchanged on a bill-and-keep basis. *See infra* Intercarrier Compensation Issue 2.c.
- The FCC, in order to bring an end to the arbitrage profits that CLECs were reaping from reciprocal compensation on ISP-bound traffic, ruled more than two years ago that ISP-bound traffic is no longer subject to section 251(b)(5) reciprocal compensation. Order on Remand and Report and Order (FCC 01-131), *In the Matter of Implementation of the Local*

Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation on ISP-Bound Traffic, CC Docket Nos. 96-98, 99-68, rel. April 27, 2001 ("*ISP Remand Order*"), ¶¶ 2, 3 ("ISP-bound traffic is not subject to the reciprocal compensation obligations of section 251(b)(5)").

- Thus, there are two separate reasons that ISP-bound calls to ISPs with FX service should not be subject to reciprocal compensation, one stemming from the fact that the calls terminate to FX numbers and the other stemming from the fact that the calls are ISP-bound.

- In the *ISP Remand* Order, however, the FCC, while ruling that ISP-bound traffic is not subject to reciprocal compensation, chose to "avoid a 'flash cut' to a new compensation regime that would upset the legitimate business expectations of carriers and their customers." *Id.* ¶ 77. In other words, the FCC decided not to suddenly cut off compensation payable for terminating traffic on which carriers had been receiving reciprocal compensation. Accordingly, the FCC established an interim regime pursuant to which ISP-bound traffic *that had theretofore been subject to reciprocal compensation* would remain subject to compensation, albeit not reciprocal compensation *per se* and (if incumbent carriers so elected) at lower rates.[14]

AT&T, in a profoundly cynical move, seeks to leverage the FCC's interim regime, the purpose of which was to avoid sudden disruptions to business plans that were based on the assumption that reciprocal compensation would *continue* to apply to ISP-bound traffic, into an entitlement to charge compensation for terminating calls – FX calls – that this Commission has for years required to be terminated on a bill and keep basis.

As the ALJs and Staff recommend, AT&T's request should be rejected. This will not upset AT&T's or anyone else's business expectations, because all the Commission will be doing is ruling that traffic that *already* is not subject to reciprocal compensation, because it is FX traffic, will remain not subject to reciprocal compensation.

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[14] As further explained in the text below, the interim regime establishes rate caps for the termination of ISP-bound traffic which incumbent carriers can elect by offering to exchange 251(b)(5) traffic at the same rates. Unless and until an incumbent carrier elects the capped rates, it must exchange ISP-bound traffic at the same state-approved rates as apply to Section 251(b)(5) traffic. *Id.* ¶ 89.

AT&T's contention that the *ISP Remand Order* somehow allows it to charge SBC Illinois for terminating calls for which it otherwise would not be allowed to charge – despite the fact that that Order plainly was not intended to impose compensation on any traffic to which compensation did not previously apply – is refuted by other aspects of the *ISP Remand Order* as well. One such aspect is the "mirroring rule" set forth in paragraph 89 of the Order.

As explained above, the FCC, having ruled that ISP-bound traffic is not subject to reciprocal compensation under Section 251(b)(5) of the 1996 Act, avoided a "flash cut" to zero compensation by establishing an interim mechanism for intercarrier compensation on ISP-bound traffic ("ISP Compensation Plan"). Under this plan, ILECs may elect, on a state-by-state basis, to exchange local ISP-bound traffic at the capped rates set by the FCC, but only if the ILEC offers to exchange traffic subject to Section 251(b)(5) at those same rates. ILECs that do not elect to invoke the ISP Compensation Plan must exchange ISP-bound traffic at the state-approved rates that apply to Section 251(b)(5) traffic. *ISP Remand Order* ¶ 89. This "mirroring" rule (*id.*) requires ISP-bound traffic to be compensated at the same rates as voice traffic, whether or not the incumbent elects the ISP Compensation Plan. As the FCC explained,

> This is the correct policy result because we see no reason to impose different rates for ISP-bound and voice traffic. . . . *We . . . are unwilling to take any action that results in the establishment of separate intercarrier compensation rates, terms and conditions for local voice and ISP-bound traffic*.

Id. ¶ 90 (emphasis added). AT&T's position, in contravention of the mirroring rule, would result in one regime for voice FX traffic (bill and keep) and a different regime for ISP-bound FX traffic (compensation). The mirroring rule requires that ISP-bound FX traffic be treated in the same manner as voice FX traffic, and since voice FX traffic is not subject to reciprocal compensation (*see infra* Issue 2.c), neither is ISP-bound FX traffic.

That conclusion is further corroborated by paragraph 8 of the *ISP Remand Order*, which clearly provides that the interim compensation scheme the FCC established for ISP-bound traffic does *not* apply to traffic – like FX traffic in Illinois – that is already being exchanged on a bill-and-keep basis:

> Because the transitional rates are *caps* on intercarrier compensation, they have no effect to the extent that states have ordered LECs to exchange ISP-bound traffic either at rates below the caps or on a bill and keep basis (or otherwise have not required payment of compensation for this traffic). The rate caps are designed to provide a transition toward bill and keep, and no transition is necessary for carriers already exchanging traffic at rates below the caps.

For all of these reasons, the PAD correctly determines that ISP-bound FX traffic, just like all other FX traffic in Illinois, will *continue* to be subject to bill and keep, as it has been since the Commission first ruled several years ago (*see* Issue 2.c) that such traffic is not subject to reciprocal compensation.

Against this background, the arguments AT&T advances in support of its exception are readily disposed of:

First, SBC Illinois is not, contrary to the impression AT&T creates, asking the Commission to change anything. It is true, as AT&T states, that AT&T and SBC Illinois have been paying each other reciprocal compensation on ISP-bound FX traffic under their old interconnection agreement, but that is only because they have been paying each other reciprocal compensation on *all* FX traffic under their old interconnection agreement. And that, in turn, is because the reciprocal compensation provisions in that agreement were written in 1996, when no one was thinking about FX traffic, and because that agreement had a uniquely long (for an interconnection agreement) five-year term. The parties' new interconnection agreement, however, will bring AT&T in line with everyone else in Illinois by subjecting FX traffic to bill and keep (*see infra* Issue 2.c), and ISP-bound FX traffic must continue to be treated the same as voice FX traffic. *See ISP Remand Order* ¶ 90 ("We . . . are unwilling to take any action that results in the establishment of separate intercarrier compensation rates, terms and conditions for local voice and ISP-bound traffic).[15]

Second, the ALJs correctly rejected AT&T's argument that the FCC's *ISP Remand Order* somehow requires a different result because it stripped the States of jurisdiction over ISP-bound traffic. Staff explained at length why the *ISP Remand Order* does not impede the Commission from deciding this issue as the PAD recommends (*see* Staff Br. 81 *et seq*.), and the PAD correctly concludes, based on that explanation, that the *ISP Remand Order* does not prohibit the Commission from "enforc[ing] FCC decisions." PAD at 119. Moreover, it is AT&T that is asking the Commission to create a special rule for ISP-bound FX traffic by exempting it from the general rule that FX traffic is not subject to reciprocal compensation, and thus AT&T that is asking the Commission to regulate ISP-bound traffic. The resolution of this issue in the PAD is perfectly consistent with recent Commission decisions declining to establish compensation rules for ISP-bound traffic.

For all these reasons, the Commission should adopt the resolution of this Issue in the PAD.

INTERCARRIER COMPENSATION:
ISSUE 2.c: Should Local Calls Be Defined As Calls That Must Originate and Terminate to End Users Physically Located within the same Common or Mandatory Local Calling Area?

AT&T's exception on this issue barely warrants a response. This Commission has received more than 35 briefs on this issue in the last three years, and has repeatedly ruled, in at

15 AT&T unfairly takes the ALJs to task by saying, "It is just flatly incorrect to conclude, as does the [PAD], that 'ISP bound FX traffic will continue to be subject to bill and keep'." AT&T Exc. 90-91. The ALJs were not talking about the existing AT&T/SBC Illinois arrangement in particular when they made that statement. Rather, as the context makes clear, they were saying that just as ISP-bound FX traffic has *generally* been subject to bill and keep in Illinois for several years, so it will continue to be.

least four separate proceedings, that a call that passes from one local exchange area to another but that appears "local" to the network because the called party has FX service is *not* subject to reciprocal compensation. *See* SBC Br. 213-215; SBC Reply 119. AT&T's principal argument to the ALJs was that the FCC's April, 2001, *ISP Remand Order* required a reversal of the Commission's precedents (*see* AT&T Br. 230-33), but that argument was doomed by the fact (ignored by AT&T) that the Commission has reaffirmed its position on FX traffic no less than three times since the FCC issued the *ISP Remand Order*, and that the Commission has previously considered and expressly rejected the argument that the *ISP Remand Order* called for a different result. *See* SBC Br. 214-215. Other State commissions have also determined that the *ISP Remand Order* does not alter their previous holdings that FX traffic is not subject to reciprocal compensation. *See* SBC Br. 215. The PAD correctly followed Staff's recommendation (PAD at 122) when it adhered to the unbroken string of Commission precedents on this issue. AT&T "respectfully disagrees with those decisions" (AT&T Exc. 94), but does not say a word about where the Commission supposedly went wrong. AT&T cannot seriously expect the Commission to overrule a decision it has made four times in the last three years without explaining what was wrong with the Commission's prior decisions.

AT&T's exception merits response on only a few additional points:

1. AT&T's assertion that SBC Illinois' position is contrary to a position SBC advocated in Michigan is false. *See* SBC Reply 119.

2. If AT&T and SBC Illinois treat FX traffic as if it were local under their current interconnection agreement, it is only because Ameritech Illinois was not thinking about FX traffic when the parties arrived at the reciprocal compensation terms for that agreement in 1996. AT&T's attempt to leverage the undeserved windfall it has enjoyed for the last several years into

a continuation of the same arrangement, which no other carrier in Illinois now has, is unbecoming.

3. The other "evidence" cited by AT&T (AT&T Exc. 95) is irrelevant.

4. SBC Illinois is confident the Commission will ignore the rhetoric to which AT&T has devoted nearly half the space it gave to this exception (AT&T Exc. 96).

INTERCARRIER COMPENSATION:
ISSUE 4: Should Information Access traffic and Exchange Services for such access be defined as traffic exempted from reciprocal compensation?

INTERCARRIER COMPENSATION:
ISSUE 7: If the originating party passes CPN on less than 90% of its calls, should those calls passed without CPN be billed as intraLATA switched access or based on a percentage local usage (PLU)?

AT&T takes exception on Intercarrier Compensation Issues 4 and 7 (*see* AT&T Exc. 85, 97), but presents no argument in support of its exceptions and offers no replacement language for the PAD on either issue (*see id.* at 97-100). AT&T has therefore waived its right to ask the Commission to reject the PAD's resolution of Intercarrier Compensation Issues 4 and 7.

INTERCARRIER COMPENSATION:
ISSUE 9: Shall SBC Illinois be required to make available to AT&T comparable compensation arrangements as those between SBC and other incumbent local exchange carriers and competitive local exchange carriers?

According to AT&T, four grounds for the PAD's resolution of this issue are inconsistent with AT&T's proposal. Even before AT&T's arguments on those four points are considered, however, there are three other reasons for affirming the PAD's rejection of AT&T's proposed contract language.

First, AT&T itself says its proposed language is unnecessary. According to AT&T, its language merely memorializes AT&T's existing right under Section 252(i) of the 1996 Act and the FCC's implementing regulation, and

> This right cannot be abrogated by contract, and even if not explicitly contained in the agreement, it fully applies to AT&T and SBC.

AT&T Exc. 98. The Commission should take AT&T at its word and proceed immediately to the next issue, comfortable that the rejection of AT&T's contract language – according to AT&T's own assertion – has not deprived AT&T of any right it is trying to assert in connection with this issue.

Second, AT&T's proposed language is impossibly vague and would lead to intractable disputes. It provides, in pertinent part:

> SBC will make available to AT&T a compensation arrangement . . . for serving customers in any optional or mandatory EAS . . . serviced by an ILEC or CLEC other than AT&T, that is *similar to* the corresponding arrangement that SBC-Illinois has with that other ILEC or CLEC . . . when AT&T is *similarly situated* to the other ILEC of CLEC.[16]

AT&T and SBC Illinois might agree once in a blue moon that AT&T is "similarly situated" to the other ILEC or CLEC (though that is doubtful since AT&T's language gives no clue to the ways in which the situations must be similar). It is virtually guaranteed, though, that AT&T would never agree that a compensation arrangement that SBC Illinois offers AT&T is "similar to" the arrangement SBC Illinois has with the other carrier. Thus, the only thing that would be certain if the Commission were to reject the ALJs' conclusion and approve AT&T's language is that if AT&T ever invoked the provision, the parties would be back in front of the Commission with a dispute about how similar "similar" situations and "similar" arrangements must be under the unexplained language in the contract. The PAD does not address this defect in AT&T's proposal[17] – it had ample reason to reject the proposal without mentioning it – but the defect is a solid alternative ground for reaching the result the ALJs reached.

[16] *See* AT&T Br. 277 (emphasis added). AT&T's current proposal is a revised version of the proposal AT&T initially advocated.

[17] SBC Illinois discussed the defect at pages 243 of its Initial Post-Hearing Brief.

Third, AT&T claims that its language reflects its rights under Section 252(i) of the 1996 Act, but Section 252(i) allows adoptions only of terms and conditions of "an agreement approved under this section" – in other words, interconnection agreements approved by the State commission pursuant to Section 252(e) of the 1996 Act – and AT&T's proposal does not reflect that limitation. The PAD identifies that failing as one reason for rejecting AT&T's proposal,[18] but AT&T's exception says nothing about that ground for the ALJs' decision.

If the Commission gets past those three points and considers AT&T's objections to the PAD's other grounds for rejecting AT&T's proposal, it will find them wanting. We address first the one that AT&T saves for last, because AT&T's position on this one is genuinely outlandish.

AT&T's theory is that it is entitled to its proposed contract language because Section 252(i) of the 1996 Act allows AT&T to opt into provisions of other agreements. As SBC Illinois emphasized in its briefs, however, the FCC has ruled that a carrier that makes such an adoption must take, along with the provisions it wants, all "legitimately related" terms and conditions in the underlying agreement, and AT&T's proposed language does not reflect that requirement. *See* SBC Br. 242. The ALJs correctly identified this as one of the defects in AT&T's proposal. PAD at 144. AT&T, however, argues that there is no need for its contract language to reflect the FCC's requirement that AT&T must take all legitimately related terms and conditions, because that requirement is embedded in the law, to which AT&T's proposal "automatically is subject." AT&T Exc. 99. According to AT&T, in other words, when language is put into an interconnection agreement to reflect a statute or rule, the language need only reflect part of the statute or rule, because the rest is necessarily implied. That is ridiculous. To the extent that language in an interconnection agreement varies from a statute or rule, it makes the parties'

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18 *See* PAD at 144 ("Moreover, AT&T's language fails to limit itself to agreements approved pursuant to Section 252").

contractual rights and obligations vary from the statute or rule. If AT&T were correct, the Agreement would merely need to say (for example) that the parties will pay each other reciprocal compensation for the transport and termination of telecommunications; there would be no need for it to address the sorts of traffic to which reciprocal compensation does or does not apply, or to say that the rates the parties pay each other will be symmetrical – all of that would be understood. The ALJs' rejection of AT&T's language on the ground that it was not faithful to the statute and rule that it purported to implement was clearly correct.[19]

Next, AT&T quibbles with the statement in the PAD that AT&T's proposal could yield "countless sets of different reciprocal compensation rates." Fine. They might not actually be "countless," but they would be "many," because AT&T is proposing that it be allowed to adopt whatever reciprocal compensation rates are in effect between SBC Illinois and any ILEC or CLEC in any "optional or mandatory, one way or two way EAS . . . area." The point remains: Section 252(i) allows CLECs to adopt as their own the interconnection provisions, UNE provisions and/or service provisions of an existing, State commission-approved agreement, but it does not allow CLECs to adopt multiple batches of provisions from multiple agreements, with each batch applicable to a different group of customers. AT&T cites no authority to the contrary.

Finally, AT&T makes much of its willingness to limit its proposal to situations in which the reciprocal compensation rate it would be adopting is lower that the rate in the Agreement. That makes no difference, though, because AT&T's language would still allow AT&T to game the system based on traffic imbalances, exactly as the ALJs concluded (PAD at 99). AT&T's

[19] An interconnection agreement could provide that the parties will do something in accordance with or pursuant to an identified statute or rule, and if the agreement explicitly identified the statute or rule, properly drafted "in accordance with" or "pursuant to" language would import into the contract all the requirements, limitations and conditions in the statute or rule. Here, however, AT&T's proposed language does not refer to any statute or rule, so there is no such importing. Consequently, AT&T's language, if approved. would actually eliminate any requirements, limitations or conditions in Section 252(i) and the FCC's implementing rule that are not explicitly set forth in the Agreement.

proposal would allow AT&T to choose on an EAS-by-EAS basis whether or not to adopt a reciprocal compensation rate that is different than the rate in the Agreement, and AT&T would naturally opt into the lower rate in those instances where more traffic is running to SBC Illinois than to AT&T, and would stick with the higher rate in the Agreement in those instances where more traffic is running to AT&T than to SBC Illinois.

For all of these reasons, the Commission should adopt the PAD's resolution of this issue.

INTERCARRIER COMPENSATION:
ISSUE 12: Should combined traffic on the Feature Group D trunks be jurisdictionally allocated for compensation purposes?

AT&T argues that it is "frankly unsure what the PO's recommended decision is" because it does not "affirmatively order any language here". AT&T Exc. 98. There is, however, nothing confusing about the ALJ's conclusion. In a comprehensive and well-reasoned decision, the PAD rejects AT&T's proposed language and endorses SBC Illinois' position. Since SBC Illinois did not propose any language, the obvious outcome is that no additional language will be included in the Agreement as a result of this issue. Rather, trunking arrangements will be covered by agreed-upon language in Articles 4 and 5. SBC Br. 257-258.

The PAD correctly dispenses with AT&T's main argument – that the multi-jurisdictional trunking arrangement it seeks here exists in other SBC states – by concluding that AT&T "does not provide the information required by the Commission to implement the proposal in Illinois" and does not justify the "specific contact language" it proposes. PAD at 152. As for AT&T's argument that its proposal is required by FCC rules, the PAD properly concludes that the FCC interconnection rule AT&T relies upon "does not give CLECs the right to demand any modification to an ILEC's systems at no cost to the CLEC." PAD at 152. AT&T's exception fails to explain why these conclusions are wrong.

AT&T completely ignores two other conclusions in the PAD that are adverse to its position: 1) the PAD accepts SBC Illinois' argument that there are serious concerns surrounding the interplay of AT&T's proposal with the provisions of SBC Illinois' access tariff; and 2) the PAD correctly concludes that AT&T's proposal conflicts with the agreed-upon language in Articles 4 and 5 that provide, among other things, that "no Party shall terminate Exchange Access traffic . . . over Local/InterLATA Interconnection Trunks". SBC Br. 257 - 261; PAD at 152. AT&T does not dispute either conclusion in its exception. Since either conclusion, standing alone, would be sufficient reason to deny AT&T's proposal, AT&T's inability to dispute these conclusions is fatal to its case.

Rather than challenge the reasoning of the PAD (which AT&T is unable to do), AT&T's exception repeats its three arguments against SBC Illinois' position. None of these well-worn arguments have improved over time.

First, AT&T contends that since the multi-jurisdictional trunking arrangement is used in other SBC states, it should also be used in Illinois. As SBC Illinois witness Tricia Pellerin explains, however, this process is not working well in other states:

> SBC has experienced numerous challenges in administering and enforcing proper jurisdictionalization of traffic on multi-jurisdictional trunks. There are a number of instances where SBC is performing tests to identify arbitrage of its switched access tariffs, predominately in the southwest states. In some cases, carriers are representing interstate traffic as local and/or routing interstate traffic over the local interconnection trunks. Interconnection agreements providing for the use of PIU and PLU factors to allocate usage for compensation make it very difficult to build an adequate case to go after legitimate revenues.

Pellerin Direct lines 1634-1642. This testimony is particularly relevant in light of recent reports that MCI has improperly routed interstate access traffic in order to reduce access charges or to avoid them altogether. AT&T, as a victim of these alleged practices, should be particularly sensitive to the need for trunking arrangements that minimize the opportunity for misclassification of traffic.

Next, AT&T repeats its argument that the on-point Commission precedent supporting SBC Illinois' position can be ignored solely due to the passage of time. AT&T Exc. 99-100. AT&T is wrong. The reasoning in the August 4, 1997 Order in Docket No. 96-0404 (Ameritech Illinois' Original 271 Compliance Proceeding) remains just as valid today as it was in 1997. There, the Commission concluded that it is commercially unreasonable to require multi-jurisdictional trunking because it uses estimated percentage factors in lieu of actual measurements to create a bill:

> We agree with Ameritech's contention that, if nonjurisdictional trunks were used, neither Ameritech nor any other carrier would be able to isolate or measure the volumes of each type of traffic that terminates over a single trunk group, which in turn would necessitate the use of estimated, percentage factors in lieu of actual measurements to create a bill. Such billing arrangements are not commercially reasonable or cost effective in the present market, as they would require extensive modifications to both Ameritech's billing systems for reciprocal compensation and its systems for billing IXC access charges.

Order at 23-24. Nothing has changed which makes reliance on estimates any better today than it was in 1997.

Finally, AT&T offers to pay SBC Illinois for billing systems modifications necessary to implement the AT&T proposal, but its offer is qualified to such an extent that it is virtually worthless to SBC Illinois. AT&T Exc. 101. To begin with, AT&T only offers to pay for "nominal" modifications, *Id*, but there is no evidence that the required changes would be "nominal". If the cost of the changes was "substantial", would AT&T's offer cover those costs? Even more troubling is AT&T's insistence that it "select the bidders to make the upgrades". AT&T Exc. 101. This means that AT&T could select a low-cost, inferior vendor to re-program SBC Illinois' sensitive and complex CABS billing systems. AT&T would never agree to this for its own billing systems, and there is no reason why SBC Illinois should consent to such a condition here. Of course, even if AT&T made a legitimate offer to pay for all of SBC Illinois' costs, that would not solve the problem. The fundamental issue here is not one of implementation costs, but the ongoing unfairness of "estimating" the jurisdictional nature of traffic through PIU and PLU; the lack of sufficient justification to depart from established precedent; the conflict with agreed-upon provisions of the Agreement; and the conflict between AT&T's proposal and SBC Illinois' access tariff.

For all these reasons, SBC Illinois respectfully requests that the ALJs reject AT&T's exceptions on this issue.

COMPREHENSIVE BILLING:
ISSUE 2: Should the Billed Party have the discretion to designate a changed billing address for different categories of bills upon 30 days written notice to the Billing Party?

In the Introduction to its Brief on Exceptions, AT&T takes credit for "not filing exceptions on a number of issues on which the [PAD] recommends a result different than the outcome proposed by AT&T in its briefs." Here, though, AT&T takes exception to the ALJs' decision on an issue concerning where SBC Illinois should send AT&T's bills. If that decision warrants an exception, one can only wonder where AT&T exercised discretion.

In any event, AT&T's exception is a pure rehash of arguments the ALJs appropriately rejected. As SBC Illinois has demonstrated (*see* SBC Br. 266-266; SBC Reply 137), AT&T is asking the Commission – with no basis in existing law – to require SBC Illinois to make costly changes in its billing systems, and AT&T has not even tried to show that the economic benefit of the proposed change would outweigh the cost. Staff recommended that AT&T's proposal be rejected on that basis (*see* Staff Br. 101-102); the ALJ's agreed; and the Commission should adopt the ALJs' recommendation.

AT&T contends that the ALJs erroneously placed the burden of proof on AT&T. According to AT&T, in other words, if AT&T says it wants something from SBC Illinois, the Commission should require SBC Illinois to provide it unless SBC Illinois can prove that AT&T doesn't need it or that the cost of providing it would outweigh the benefit AT&T would receive. *That* is unreasonable. It is AT&T's proposal. AT&T has no argument that the law requires what it is requesting. And it is therefore AT&T's burden to establish *at least* that its proposal makes economic sense. As Staff pointed out, AT&T made no attempt in this instance even to quantify the benefit it would derive from its proposed requirement. That alone made a cost/benefit analysis impossible, without even considering who had to prove what about SBC Illinois' costs.

When AT&T wants the Commission to impose a requirement on SBC Illinois that has no basis in existing law (which is indisputably the case here), AT&T has the burden (as the PAD correctly concludes) to prove the benefit it would derive, and AT&T also has the burden to make at least a prima facie case that that benefit would outweigh the cost to SBC Illinois (a cost which AT&T, with the aid of discovery, can ascertain as well as SBC Illinois can). Only if AT&T carries those burdens can the Commission seriously entertain AT&T's proposal.[20]

The PAD correctly resolves Comprehensive Billing Issue 2, and the Commission should so hold.

COMPREHENSIVE BILLING:
ISSUE 3: Must SBC provide the OCN of an originating carrier to AT&T operating as a facilities based carrier, when the originating carrier is utilizing SBC's switch on an unbundled basis?

AT&T is either confused about this issue or is trying to confuse the Commission.

[20] This is not to say that every proposal that makes economic sense should be approved. A proposal may, for example, make economic sense as between SBC Illinois and AT&T but be discriminatory, contrary to the public interest, or otherwise unreasonable.

The record is undisputed: When AT&T, as a facilities-based provider, is using terminating recordings produced within its network to bill reciprocal compensation, SBC Illinois will provide AT&T with reports that will identify all UNE-originating traffic, so that AT&T can bill the originating carrier reciprocal compensation. The parties have agreed on contract language that so provides. AT&T, however, asked the Commission to require those reports to identify the originating carriers by their "OCNs" – Operating Company Numbers. That is all this issue is about – whether the report will include the originating carriers' OCNs.

The PAD correctly concludes that the reports need not include OCNs, because they will instead identify the originating carriers by another unique identifying number, the "ACNA" (Access Customer Name Abbreviation).

It is undisputed that the ACNA identifies the carrier as well as the OCN does. AT&T's witness agreed that the ACNA will enable AT&T to identify the originating carrier (Tr. 14-18), and AT&T offered no evidence that even tries to explain why the ACNA will not perfectly well serve the purpose AT&T is trying to achieve when it asks for the OCN. *See* SBC Br. 270. Accordingly, the PAD correctly finds that, "There has been no competent evidence provided to show that the OCN will provide . . . additional information necessary for AT&T to properly bill the originating carrier whose call is terminated on the AT&T switches." PAD at 158.

What, then, is AT&T's objection to the PAD? It takes AT&T two and a half pages to get to it, but when it finally does, AT&T states,

> The problem with SBC's proffered report . . . is that it only provides total terminating minutes of use in the billing period for each originating carrier, and does not provide individual call detail. . . . [Therefore,] SBC's report . . . is insufficient to support AT&T's billings to the originating carriers . . . .

AT&T Exc. at 115.

But that has nothing to do with OCNs or ACNAs. If the report does not include call detail, putting the originating carriers' OCNs in the report would make no difference. It would merely give AT&T *two* identifying numbers for each originating carrier – the ACNA and the OCN – but still with no call detail.[21] Thus, AT&T's "exception" is not really an exception at all, because it is not an objection to anything the ALJs actually decided and it does not concern anything the ALJs (or the Commission) were asked to decide.

AT&T's treatment of this issue goes from bad to worse. AT&T states:

> The [PAD] is incorrect in stating that there has been no competent evidence provided to show that OCN will provide the additional information necessary for AT&T to properly bill the originating carrier whose call is terminated on AT&T switches. Simply put, the OCN of the originating carrier of such a call will provide AT&T with the most fundamental piece of information needed to bill for terminating the call: the identity of the originating carrier.

AT&T Exc. 115-116 (emphasis in original). That is what SBC Illinois had in mind when it stated that AT&T is either confused or is trying to confuse the Commission. AT&T will already be getting the identify of the originating carrier, because the reports will include the originating carriers' ACNAs. What the PAD meant – what it said, in fact – is that the OCN would not give AT&T any *additional* information, and the record shows that that is absolutely correct.

Finally, AT&T notes that SBC Illinois has agreed to give AT&T OCNs when AT&T is terminating calls with SBC Illinois' switch which AT&T is leasing, and contends that SBC Illinois must therefore be able to provide OCNs when AT&T is terminating calls as a facilities-based provider as well. AT&T Exc. 116-117. AT&T is wrong. As SBC Illinois' witness explained, SBC Illinois will *not* be able to provide AT&T OCNs when AT&T is operating as a

[21] The Commission need not concern itself with whether there is any merit to AT&T's belated complaint that the reports do not include call detail, because AT&T raised no issue in this arbitration having to do with call detail – the first mention of it was at hearing. In any event, there has been no evidentiary showing that the reports SBC Illinois will be providing do not include call detail, and there is no evidence that AT&T needs call detail. *See* SBC Reply 140.

facilities-based carrier; SBC Illinois' ULS Port OCN project "is only on a UNE-P to UNE-P basis, not on a UNE-P to facility basis"; and the reason for that is that when AT&T is terminating calls as a facilities-based carrier, "we do not provide AT&T a record. So there is no mechanism for getting it. If we had the information, we wouldn't have any way to get it to AT&T. If AT&T [is] terminating that traffic on their switch, they make the recording, not SBC. Only if it's a UNE-P to UNE-P." Tr. 200-201. AT&T did not rebut or refute that evidence, and it does not undertake to do so now.

Accordingly, the Commission should adopt the PAD's resolution of this issue, subject only to the modifications proposed in SBC Illinois' Brief on Exceptions at pp. 42-43.

COMPREHENSIVE BILLING:

ISSUE 4.a: Should SBC Illinois be required to provide to AT&T the OCN of 3rd party originating carriers when AT&T is terminating calls as an unbundled switch user of SBC Illinois?

ISSUE 4.b: Should SBC Illinois be billed on a default basis when it fails to provide the 3rd party originating carrier OCN to AT&T when AT&T is terminating calls as the unbundled switch user?

AT&T proposes three changes to the PAD on this issue, and all three are untenable.[22]

First, AT&T asserts (correctly) that the language approved in the PAD requires SBC Illinois to give AT&T OCNs only for originating carriers that are using unbundled switching leased from SBC Illinois, and (incorrectly) that the language should be changed to require SBC to give AT&T OCNs for originating facilities-based carriers as well. AT&T Exc. 118. AT&T presents this exception almost as if the limitation in the PAD were an oversight, so that all that AT&T is asking for is an uncontroversial correction. In reality, though, AT&T tried and failed to persuade the ALJs to require SBC Illinois to provide OCNs for facilities-based carriers, and

[22] The PAD decided Issues 4.a and 4.b together (PAD at 159-161), and AT&T shows both 4.a and 4.b as the subjects of its exception (AT&T Exc. 118). To avoid possible confusion, we note that AT&T's exceptions actually pertain only to Issue 4.a.

AT&T's exception, instead of addressing the reasons for the distinction – which were fully explained by SBC Illinois and adopted by the PAD – ignores them.

SBC Illinois' witness testified in no uncertain terms that SBC Illinois cannot provide OCNs of originating facilities-based carriers, and he explained why. *See* SBC Reply 143-144. AT&T cross-examined SBC Illinois' witness on this issue, but did not challenge his testimony on this point, and did not rebut or refute SBC Illinois' evidence in any way. *See id.* The PAD appropriately accepted SBC Illinois' unrebutted evidence, and ruled on that basis that "SBC should be able to provide this information [the OCNs] . . . when the originating third party carrier utilized the SBC ULS Port," but not otherwise. PAD at 160-161. And AT&T's brief on exceptions even acknowledges why SBC Illinois can provide the OCN of originating UNE-based carriers but not originating facilities-based providers. *See* AT&T Exc. 118 ("SBC . . . is aware of *what CLECs are purchasing its unbundled local switch elements*, so SBC has [that] information") (emphasis added).

AT&T's brief on exceptions comes to grips with none of this – it merely asserts that AT&T "needs" OCNs for originating facilities-based carriers as well as originating UNE-based carriers. AT&T has not even tried to explain (and could not possibly explain, given the factual record) why the ALJs got it wrong, and AT&T's principal exception on this issue must therefore be rejected.

Second, the PAD approves contract language that states, "SBC will include the OCN . . . when technically feasible," and AT&T proposes that the reference to technical feasibility be deleted. AT&T Exc. 119. This is a silly objection. SBC Illinois cannot include the OCN when it is not technically feasible to do so, and AT&T has never given a coherent explanation for its objection.[23] And all AT&T says to support its position is in its brief on exceptions is that SBC Illinois' responsibility is tied to the completion of SBC's ULS Port OCN project. AT&T Exc. 119. That is irrelevant. If there are instances, even after completion of that project, where it is not technically feasible for SBC Illinois to provide OCNs, then SBC Illinois will not be able to provide OCNs.[24]

Third, the language approved by the PAD requires SBC Illinois to start providing OCNs when it completes its ULS Port OCN project "which is targeted for completion during first quarter of 2004," and AT&T wants the Commission to change the target date to a date certain. AT&T Exc. 119. AT&T has waived its right to make that request, AT&T itself proposed contract language that treated first quarter, 2004, as a target date rather than a firm date.[25] AT&T's objection is also disingenuous, because the record is clear that while the first quarter of 2004 remains the target date, it is uncertain whether the project will be completed by then. *See* Tr. 199-200. There is nothing in the record that would justify a Commission requirement that SBC Illinois complete the project before it is going to be completed in the normal course (no

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[23] The incoherent explanation in AT&T's post-hearing briefs shows only how far AT&T is willing to stretch to come up with something to say. AT&T stated, "SBC states that AT&T cannot object to not being provided originating carrier OCNM information where it is 'technically infeasible' for SBC to provide it. . . . It is not AT&T's responsibility to instruct SBC as to the technically feasible way to accomplish this." AT&T Reply 113. SBC Illinois is not asking for instruction. SBC Illinois is simply saying that if it isn't technically feasible, it can't be done.

[24] SBC Illinois has explained why there may be instances, even after completion of the ULS Port OCN project, where it will not be technically feasible to provide OCN. *See* Tr. 197-198.

[25] In its Initial Brief, at p. 303, AT&T wrote in connection with this issue, "AT&T has proposed the following compromise language:

> SBC-Illinois will include the OCN of the originating carrier . . . with an effective date *targeted for* the 1st quarter 2004. . . ." (Emphasis added.)

AT&T did not even retract that proposal in its post-hearing reply brief – it is only now, in its brief on exceptions, that AT&T is disavowing the use of first quarter 2004 as a target date.

evidence, for example, that SBC Illinois has been dilatory), so the Commission would have to reject this exception even if AT&T had not waived its right to assert it.

OSS:
ISSUE 2: Should AT&T be required to specify features or functionalities on UNE-P migration orders or should AT&T be able to indicate 'as is' on UNE-P migration orders through a standard indicator on the orders.

AT&T prevailed on the question whether SBC Illinois should provide "as is" ordering for UNE-P migrations.[26] AT&T nonetheless takes exception to the conclusion in the PAD that AT&T should pay for its share of costs necessary to accommodate "as is" ordering for UNE-P. AT&T's exception should be rejected.

AT&T's sole justification for avoiding payment of these costs is that SBC Illinois did not stop supporting "as is" ordering until October, 2002, but this argument has no substance. AT&T is not claiming that SBC Illinois could easily restore the "as is" ordering functionality – it is undisputed that SBC Illinois cannot. That feature was last supported in the local service ordering guidelines ("LSOG") version 1, Issue 7 which was superceded by three subsequent LSOG versions – LSOG 4, LSOG 5, and LSOG 6. SBC Illinois witness Lance McNiel explained that it would be expensive and difficult to change the ordering system now, and neither Staff nor AT&T dispute this fact. SBC Br. 282.

Similarly, AT&T is not claiming that SBC Illinois has violated any industry agreement or Commission rule when it stopped supporting "as is" ordering – it clearly did not. To the contrary, SBC Illinois worked closely with Commission Staff and CLECs through its industry collaborative processes to develop and refine the features supported in the current LSOG versions. These industry collaboratives were conducted under the auspices of the Commission's order in 98-0555 (the SBC/Ameritech merger docket). The "Plan of Record" required by the

[26] SBC Illinois has excepted to that portion of the ALJ's ruling on OSS Issue 2. SBC Exc. 47-54.

Commission in that docket was reviewed and approved by the Commission in Docket 00-0592. In reliance on the Plan of Record and the industry collaborative processes, SBC Illinois deployed the current LSOG versions that use an "as specified" order process. If, at this late date, SBC Illinois is required to incur the disruption and expense to re-develop and re-deploy "as is" ordering, (and it should not be, as SBC Illinois explains in its exception on this issue), simple fairness dictates that AT&T pay for all the costs SBC Illinois incurs in that effort. This is particularly so because this would be done at a AT&T's request and for AT&T's benefit and convenience. In other words, if AT&T truly believes that "as is" ordering so fundamentally impacts its business, it should be required to bear those costs. Staff agrees. As Staff succinctly states, AT&T should pay for any costs SBC Illinois must incur to accommodate "as is" ordering since such ordering is "not essential" to AT&T. Staff Br. 104.

For all these reasons, SBC Illinois respectfully requests that AT&T's exception for OSS Issue 2 be rejected.

PRICING:
ISSUE 1: Should AT&T's rates for SBC's use of Space License apply on a per trunk group or per switch basis?

AT&T raises four arguments in support of its exceptions on this issue, none of them convincing. Once again AT&T's primary argument is that the "per trunk group" limitation applies in the four other SBC Midwest states, so it should apply in Illinois, too. AT&T Exc. 123. The ALJ's properly found this "not convincing", PAD at 167, and this conclusion is entirely reasonable in view of the fact that: 1) what happened in other SBC Midwest states is completely irrelevant to whether SBC Illinois can contest the issue here; and 2) in the other states, SBC understandably missed the insertion of the three words ("per trunk group") into the Pricing Schedule because it was difficult to detect given the small print and cramped language of the document.

Second, AT&T repeats its argument that the discount schedule "has been prepared on a per trunk group basis" and the rates have been set accordingly. AT&T Exc. at 123. There is absolutely no support in the record for this assertion. In fact, evidence submitted by both SBC Illinois and AT&T establishes just the opposite. As Mr. Silver testified, the current interconnection agreement (executed in 1997) contains a discount schedule for Space License rates which is identical to SBC Illinois' proposal in this case. Silver, Sch. MDS-2. In other words, it contains the exact discount levels and the exact monthly rates that AT&T proposes here, only it does not include the "per trunk group" limitation. It is difficult to credit AT&T's assertion that its Space License rates were "prepared on a trunk group basis" when, in fact, they were agreed to and included in the current interconnection agreement in 1997. AT&T's own evidence confirms this. AT&T witness Rhinehart included in his testimony a page from AT&T's access tariff that shows a discount schedule and rates for Space License. AT&T Ex. 4.3. It is identical to the Space License rate schedule in the current (1997) agreement. Thus, AT&T's own evidence shows that the "per trunk group" limitation was an *afterthought* and that AT&T did not develop its rates with the "per trunk group" limitation in mind.

Third, the record evidence dispenses with AT&T's argument that SBC Illinois is somehow obligated to present a "cost justification for its approach". AT&T Exc. at 124. AT&T – not SBC Illinois – is the proponent of changing the current arrangement by including the "per trunk group" limitation and AT&T therefore bears the burden of demonstrating why it is reasonable. SBC Illinois demonstrated in its briefs that AT&T has failed completely on this score because AT&T's proposal would produce rates that exceed SBC Illinois' comparable collocation rates and would make it virtually impossible for SBC Illinois to ever pay less than the highest rate in the discount schedule. SBC Br. 286-290; SBC Reply Br. 150-152.

Finally, AT&T again argues that it "*ought* to be difficult to reach the maximum discount". AT&T Exc. at 124. This completely ignores SBC Illinois' argument that it is not merely "difficult" – it is literally *impossible* to reach the maximum discount because the capacity of the Lucent switch only permits 81 DS1s to be organized into a single trunk group. Thus, under AT&T's proposal, SBC Illinois could *never* get beyond the third highest tier of the pricing schedule when it used a Lucent switch. Mindell Rebuttal lines 402-407. Moreover, under AT&T's proposal SBC Illinois would only *rarely* have sufficient volumes to pay anything less than the maximum rate. Silver Direct lines 169-173. By asserting that "this argument should carry no weight", AT&T Exc. 124, AT&T is asking this Commission to adopt a discount schedule that provides no discounts at all. Such a result is clearly unreasonable and should be rejected.

PRICING:
ISSUE 4: What is the proper rate for reciprocal compensation associated with ULS-ST?

All agree that this issue is identical to Intercarrier Compensation Issue 1. For the reasons set forth in SBC Illinois' reply to AT&T's exception to Intercarrier Compensation Issue 1, AT&T's exception to Pricing Issue 4 should be rejected. This resolution is consistent with the position of Staff in this matter. Staff Br. 69-72.

IV. CONCLUSION

For the foregoing reasons, SBC Illinois respectfully requests that the Commission reject AT&T's proposals to alter the Proposed Arbitration Decision and adopt the Proposed Arbitration Decision with the changes suggested by SBC Illinois in its Brief on Exceptions and its Reply Brief on Exceptions.

Dated: August 14, 2003

Respectfully submitted

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CERTIFICATE OF SERVICE

I, Mark R. Ortlieb, an attorney, certify that a copy of the foregoing **SBC ILLINOIS' REPLY BRIEF ON EXCEPTIONS** was served on the following parties by electronic transmission on August 14, 2003.

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